16B C.J.S. Constitutional Law IV XIII Refs.

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

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Research References

A.L.R. Library

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1146. Freedom of association, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1445

The constitutional right of freedom of association is protected by the First and Fourteenth Amendments to the Constitution, as well as by the provisions of particular state constitutions.

Although the Constitution does not explicitly mention a right of freedom of association,[1] it has been held that the constitutional right of freedom of association is protected by the First[2] and Fourteenth[3] Amendments to the Constitution, as well as by the provisions of particular state constitutions.[4] Further, the right to associate for the purpose of engaging in those activities protected by First Amendment is a basic constitutional freedom that lies at foundation of free society.[5] The effective exercise of freedoms of speech and assembly is enhanced by the freedom of group association to advocate different points of view.[6]

In any event, mere public intolerance or animosity cannot be the basis for the abridgment of the constitutional right of freedom of association,[7] and it cannot be abridged merely because its exercise may be annoying[8] or distasteful[9] to some persons.

Illegal aims or purposes.

No First Amendment right exists to associate or assemble for the purpose of promoting or conducting imminent criminal or delinquent acts.[10] However, the First Amendment right to associate does not lose all constitutional protection merely because some members of a group may have participated in conduct or advocated doctrine that itself is not protected.[11] In general, when a quasi-political or other group may embrace both legal and illegal aims, affiliation with and membership in that group are constitutionally protected[12] except for those who join with the specific intent to further illegal action.[13] But such specific intent cannot be inferred from an individual's personal advocacy of such goals,[14] and a person cannot be punished merely because of his or her association with a particular group, if that person does not participate in its illegal activities.[15]

A person may be subjected to a civil disability for membership in a subversive organization with knowledge of its unlawful purposes and the specific intent to further those purposes.[16]

Membership restrictions; invidious discrimination.

Although it has been held that a private association restricted in its membership on a racial or other basis is one expression of the freedom of association,[17] the Supreme Court has said that a city human rights law prohibiting private clubs from practicing invidious discrimination does not infringe on the right of expressive association as not every setting in which an individual exercises some discrimination in choosing associates deserves constitutional protection.[18] Furthermore, applying a civil rights statute to prohibit private, commercially operated, nonsectarian schools from denying admission to prospective students because they are blacks does not violate the right of free association protected by First Amendment, particularly where there was no showing that discontinuance of discriminatory admission practices would inhibit teaching any ideas or dogma.[19]

Public facilities.

In general, the exclusion of any person or group from public facilities infringes upon the freedom of the individual to associate as he or she chooses and because the exercise of freedom of association is largely dependent on the right to own or use property, any denial of access to public facilities must withstand close scrutiny and be carefully circumscribed.[20]

CUMULATIVE SUPPLEMENT

Cases:

Alleged reputational harm to fans of musical group, who self-identified as "Juggalos," and chilling effect resulting from use of the term "hybrid gang" in reference to Juggalos in National Gang Intelligence Center threat assessment were redressable by an order declaring the assessment unconstitutional and setting it aside, as required for fans to establish Article III standing to bring claims against Department of Justice (DOJ) and FBI for violations of their First Amendment rights to free association and expression and their Fifth Amendment due process rights; while assessment was not the designation itself, it reflected the designation and included an analytical component of the criminal activity performed by Juggalo subsets, and requested order would likely combat at least some future risk that fans would be subjected to reputational harm and chill due to the force of the DOJ's criminal gang-like designation. U.S.C.A. Const. Art. 3, § 1 et seq.; U.S.C.A. Const.Amends. 1, 5. Parsons v. U.S. Dept. of Justice, 801 F.3d 701 (6th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Healy v. James, 408 U.S. 169, 92 S. Ct. 2338, 33 L. Ed. 2d 266 (1972); Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

2 U.S.—Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992); N. A. A. C. P. v. Claiborne Hardware Co., 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982); Smith v. Arkansas State Highway Emp., Local 1315, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979); Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977); Healy v. James, 408 U.S. 169, 92 S. Ct. 2338, 33 L. Ed. 2d 266 (1972).

Idaho—State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

Pa.—Com. v. Mayfield, 574 Pa. 460, 832 A.2d 418 (2003).

Wash.—City of Bremerton v. Widell, 146 Wash. 2d 561, 51 P.3d 733 (2002).

Like-minded individuals

The ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed under the First Amendment.

U.S.—Knox v. Service Employees Intern. Union, Local 1000, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

3 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977); Cousins v. Wigoda, 419 U.S. 477, 95 S. Ct. 541, 42 L. Ed. 2d 595 (1975); Williams v. Rhodes, 393 U.S. 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); Elfbrandt v. Russell, 384 U.S. 11, 86 S. Ct. 1238, 16 L. Ed. 2d 321 (1966).

Ind.—Lindquist v. Lindquist, 999 N.E.2d 907 (Ind. Ct. App. 2013).

Pa.—Com. v. Mayfield, 574 Pa. 460, 832 A.2d 418 (2003).

4 Cal.—Conejo Wellness Center, Inc. v. City of Agoura Hills, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).

La.—Louisiana Republican Party v. Foster, 674 So. 2d 225 (La. 1996).

5 Tex.—Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000).

6 Wis.—Weber v. City of Cedarburg, 129 Wis. 2d 57, 384 N.W.2d 333 (1986).

7 U.S.—Coates v. City of Cincinnati, 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971).

8 U.S.—Hastings v. Bonner, 578 F.2d 136 (5th Cir. 1978).

9 Cal.—Braxton v. Municipal Court, 10 Cal. 3d 138, 109 Cal. Rptr. 897, 514 P.2d 697 (1973).

10 Fla.—Enoch v. State, 95 So. 3d 344 (Fla. 1st DCA 2012), review denied, 108 So. 3d 654 (Fla. 2013).

11 **Statute criminalizing recruitment of gang members**

Statutory provision that criminalized the recruitment of members into a criminal gang implicated the First Amendment right to free association, even though the organizations at issue were involved in criminal activity, such that provision would be overbroad if it precluded a significant amount of that constitutional protected conduct.

Idaho—State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

12 U.S.—Boorda v. Subversive Activities Control Bd., 421 F.2d 1142 (D.C. Cir. 1969).

Activities of some members

Right to associate does not lose all constitutional protection merely because some members of group may have participated in conduct or advocated doctrines that are not protected.

U.S.—N. A. A. C. P. v. Claiborne Hardware Co., 458 U.S. 886, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982).

13 U.S.—Boorda v. Subversive Activities Control Bd., 421 F.2d 1142 (D.C. Cir. 1969).

14 W. Va.—Pushinsky v. West Virginia Bd. of Law Examiners, 164 W. Va. 736, 266 S.E.2d 444 (1980).

15 U.S.—Lewitus v. Colwell, 479 F. Supp. 439 (D. Md. 1979).

16 U.S.—Cummings v. Hampton, 485 F.2d 1153 (9th Cir. 1973).

17 U.S.—Wesley v. City of Savannah, Ga., 294 F. Supp. 698 (S.D. Ga. 1969).

18 U.S.—New York State Club Ass'n, Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988).

19 U.S.—Runyon v. McCrary, 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976).

20 U.S.—Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1147. Nature of association right

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1445

The constitutional right of freedom of association, that is, the right of individuals to exercise as a group those rights which they may exercise as individuals, is an implied First Amendment right.

The reason the right to association is constitutionally protected is because it serves as a means of preserving other First Amendment activities, such as free speech,[1] assembly, petition for redress of grievances, and the exercise of religion.[2] In fact, the First Amendment protects the right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.[3] The right to associate is recognized due to the inextricable link between association and the enumerated rights of the First Amendment and the role of association in facilitating self-governance.[4] The constitutional freedom of association guarantees an opportunity for people to express their ideas and beliefs through membership or affiliation with a group[5] although it should be noted that the right under the First Amendment to associate for expressive purposes is not absolute.[6]

The right to free association is a right closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.[7] Thus, the right of freedom of association is a basic or fundamental constitutional freedom or right.[8] Although the First Amendment does not use the word "association," the right to freedom of association has grown from the rights to

peaceably assemble and to enjoy freedom of speech.[9] The freedom of association is thus implicit in the First Amendment's protections.[10] The right to associate is not derived from some ethereal notion that individuals be granted the right to organize for organization's sake, rather, associational rights are rooted in the First Amendment's protection of freedoms of speech and assembly.[11]

In general, freedom of association plainly presupposes a freedom not to associate.[12] The First Amendment guarantees the freedom of association and by extension the freedom from coerced association with particular groups,[13] and persons have a constitutionally protected right to not associate with any group.[14]

Conversely, forced inclusion of unwanted person in a group infringes group's freedom of expressive association if presence of that person affects in significant way the group's ability to advocate public or private viewpoints.[15]

The First Amendment does not require that every member of group agree on every issue in order for group's policy to be expressive association.[16] Nor does an association have to associate for the purpose of disseminating a certain message in order to be entitled to protections of First Amendment, association must merely engage in expressive activity that could be impaired in order to be entitled to protection.[17]

CUMULATIVE SUPPLEMENT

Cases:

Ballot initiative, which amended Washington's Public Records Act (PRA) by prohibiting public access to in-home care providers' personal information, but permitting that information to be disclosed to providers' certified exclusive bargaining representatives, did not implicate in-home care providers' associational freedom, and thus did not violate the First Amendment; although providers argued that initiative disabled them from removing unions as their exclusive bargaining representatives such that they were stuck in compelled association with the unions, providers were not members of the unions, providers did not pay agency fees to the unions, and First Amendment did not require government to make it simple for collective bargaining unit to change its exclusive representation. U.S. Const. Amend. 1; Wash. Rev. Code Ann. §§ 42.56.640, 43.17.410. Boardman v. Inslee, 978 F.3d 1092 (9th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2014), cert. denied, 134 S. Ct. 2881, 189 L. Ed. 2d 833 (2014) and cert. denied, 134 S. Ct. 2871, 189 L. Ed. 2d 833 (2014).
Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).
Freedom of expression
The right to associate freely and be free from compelled association exists where the activity underlying the association is itself protected by the freedom of expression under the First Amendment.
Cal.—Concerned Dog Owners of California v. City of Los Angeles, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).

2 U.S.—Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2014), cert. denied, 134 S. Ct. 2881, 189 L. Ed. 2d 833 (2014) and cert. denied, 134 S. Ct. 2871, 189 L. Ed. 2d 833 (2014).

3 U.S.—National Ass'n for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3764 (U.S. Mar. 19, 2015); Fields v. City of Tulsa, 753 F.3d 1000 (10th Cir. 2014), cert. denied, 135 S. Ct. 714, 190 L. Ed. 2d 440 (2014).
Conn.—State v. Bonilla, 131 Conn. App. 388, 28 A.3d 1005 (2011).

4 S.C.—Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 746 S.E.2d 329 (2013).

Correlative freedom

An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.

U.S.—Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114, 82 A.L.R. Fed. 2d 723 (10th Cir. 2013), cert. granted, 134 S. Ct. 678, 187 L. Ed. 2d 544 (2013) and aff'd, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014).

5 Mass.—Town of Hanover v. New England Regional Council of Carpenters, 467 Mass. 587, 6 N.E.3d 522 (2014).

6 Idaho—State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).
S.D.—Steele v. Bonner, 2010 SD 37, 782 N.W.2d 379 (S.D. 2010).

7 U.S.—State Emp. Bargaining Agent Coalition v. Rowland, 718 F.3d 126 (2d Cir. 2013), cert. dismissed, 134 S. Ct. 893, 187 L. Ed. 2d 699 (2014) and cert. denied, 134 S. Ct. 1002, 187 L. Ed. 2d 863 (2014).

8 Alaska—Matter of Mendel, 897 P.2d 68 (Alaska 1995).
S.C.—Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 746 S.E.2d 329 (2013).
Tex.—In re Bay Area Citizens Against Lawsuit Abuse, 982 S.W.2d 371 (Tex. 1998).

9 Fla.—Jacobson v. Southeast Personnel Leasing, Inc., 113 So. 3d 1042 (Fla. 1st DCA 2013).

10 U.S.—Laborers Local 236, AFL-CIO v. Walker, 749 F.3d 628 (7th Cir. 2014).

11 Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

12 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013); Fields v. City of Tulsa, 753 F.3d 1000 (10th Cir. 2014), cert. denied, 135 S. Ct. 714, 190 L. Ed. 2d 440 (2014).

13 Cal.—Concerned Dog Owners of California v. City of Los Angeles, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).

14 U.S.—Besig v. Dolphin Boating and Swimming Club, 683 F.2d 1271, 34 Fed. R. Serv. 2d 1088 (9th Cir. 1982).
Cal.—Concerned Dog Owners of California v. City of Los Angeles, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).
S.C.—Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 746 S.E.2d 329 (2013).

15 U.S.—Boy Scouts of America v. Dale, 530 U.S. 640, 120 S. Ct. 2446, 147 L. Ed. 2d 554, 82 A.L.R.5th 625 (2000).

16 U.S.—Boy Scouts of America v. Dale, 530 U.S. 640, 120 S. Ct. 2446, 147 L. Ed. 2d 554, 82 A.L.R.5th 625 (2000).

17 U.S.—Boy Scouts of America v. Dale, 530 U.S. 640, 120 S. Ct. 2446, 147 L. Ed. 2d 554, 82 A.L.R.5th 625 (2000).
Mass.—Donaldson v. Farrakhan, 436 Mass. 94, 762 N.E.2d 835 (2002).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1148. Nature of association right—Categories of association

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1443, 4035

The First Amendment right of association encompasses two distinct types of freedoms: the choice to enter into and to maintain certain intimate human relationships and the right to associate for the purpose of engaging in expressive activity.

The First Amendment right of association encompasses two distinct types of freedoms: the choice to enter into and to maintain certain intimate human relationships and the right to associate for the purpose of engaging in expressive activity.[1] The right of intimate association is derived from the due process concepts of the Fourteenth Amendment and the principles of liberty and privacy found in the Bill of Rights while the right of expressive association stems from the First Amendment, guarding those activities protected by that amendment: speech, assembly, petition for the redress of grievances, and the exercise of religion.[2]

To qualify as expressive association that is protected by the First Amendment, a group must engage in some form of expression, whether it be public or private.[3] An association under the First Amendment's expressive associational right is any group that engages in expressive association.[4] The freedom to speak under the right of expressive association could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.[5] The right of expressive association is the First Amendment right to associate for the purpose of speaking, and

the right protects a group's membership decisions and shields against laws that make group membership less attractive without directly interfering in an organization's composition.[6]

To evaluate an expressive association claim, a court uses a three-step process: the first element asks whether a group is entitled to protection; the second asks whether the government action in question significantly burdens the group's expression, affording deference to the group's view of what would impair its expression; and the third requires weighing the government's interest in the restriction against plaintiff's right of expressive association.[7]

The other type of association protected by the First Amendment concerns intimate human relationships, which are implicated in personal decisions about marriage, childbirth, raising children, cohabiting with relatives, and the like, and receives protection as a fundamental element of personal liberty.[8] While the right of intimate association does not exclusively protect family relationships, relationships that attend the creation and sustenance of a family are appropriate benchmarks for evaluating whether a relationship qualifies for protection as an intimate association.[9] To determine whether a particular relationship qualifies as intimate association that is protected by the First Amendment, courts consider factors including the size of the group, its exclusivity, its purpose, and whether outsiders are permitted to participate in critical aspects of the relationship.[10]

Decisions to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to the United States' constitutional scheme.[11] The First Amendment protects the ability to choose one's intimate associates freely, not the ability to engage in any conduct in any place so long as one is interacting with his or her intimate associates.[12]

Direct and substantial interference with intimate association is subject to strict scrutiny under the Due Process Clause while lesser intrusions are subject only to rational basis review.[13] A direct and substantial interference with intimate associations exists, in violation of due process, if a large portion of those affected by the rule are absolutely or largely prevented from forming such associations or if those affected by the rule are absolutely or largely prevented from forming intimate associations with a large portion of the otherwise eligible population.[14]

Family association.

Family association is a form of intimate association,[15] and the right to associate with one's family is fundamental.[16] The right to be married is a freedom of association right entitled to special constitutional protection.[17] Choices about marriage, family life, and the upbringing of children are among associational rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect.[18] In order to show deprivation of the right to familial association, a plaintiff must show that the state actor intended to deprive him or her of a specially protected familial relationship.[19] It should be noted the right to free association in personal relationships, which includes a parent's right to the care and upbringing of his or her child, is not absolute, and infringements may be justified by a compelling state interest in the protection of children.[20]

Footnotes

1 Alaska—Fraternal Order of Eagles v. City and Borough of Juneau, 254 P.3d 348 (Alaska 2011).
Colo.—Krystkowiak v. W.O. Brisben Companies, Inc., 90 P.3d 859 (Colo. 2004).
Ohio—State v. Burnett, 93 Ohio St. 3d 419, 2001-Ohio-1581, 755 N.E.2d 857, 107 A.L.R.5th 821 (2001).
Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

2 Wash.—City of Bremerton v. Widell, 146 Wash. 2d 561, 51 P.3d 733 (2002).

3 U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013).

4 Ky.—Kirby v. Lexington Theological Seminary, 426 S.W.3d 597, 303 Ed. Law Rep. 1051 (Ky. 2014).

Socializing with friends and acquaintances at a neighborhood bar did not qualify as expressive association

U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013).

5 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).

6 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).

7 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).

8 U.S.—Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2014), cert. denied, 134 S. Ct. 2881, 189 L. Ed. 2d 833 (2014) and cert. denied, 134 S. Ct. 2871, 189 L. Ed. 2d 833 (2014).

9 U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013).

10 U.S.—Goodpaster v. City of Indianapolis, 736 F.3d 1060 (7th Cir. 2013); Fair Housing Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216 (9th Cir. 2012).

Health insurance companies

Relationships with large business enterprises like health insurance companies do not qualify as intimate associations warranting constitutional protection under the freedom of association.

U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).

11 U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).

Choosing one's spouse

Because the right to intimate association is an intrinsic personal liberty, the First Amendment imposes constraints on the State's power to control the selection of one's spouse that would not apply to regulations affecting the choice of one's fellow employees; however, indirect intrusions on that right may be subject to reasonable regulation.

Md.—Cross v. Baltimore City Police Dept., 213 Md. App. 294, 73 A.3d 1186 (2013).

12 Alaska—Fraternal Order of Eagles v. City and Borough of Juneau, 254 P.3d 348 (Alaska 2011).

13 U.S.—State v. Loyuk, 289 Neb. 967, 857 N.W.2d 833 (2015).

14 U.S.—State v. Loyuk, 289 Neb. 967, 857 N.W.2d 833 (2015).

15 U.S.—Kolley v. Adult Protective Services, 725 F.3d 581 (6th Cir. 2013).

16 Wyo.—In re KMO, 2012 WY 100, 280 P.3d 1216 (Wyo. 2012).

Parents and children

Just as parents have a fundamental right to associate with their children, children have as fundamental a right to familial association with their parents.

Wyo.—Arnott v. Arnott, 2012 WY 167, 293 P.3d 440 (Wyo. 2012).

17 U.S.—McCabe v. Sharrett, 12 F.3d 1558 (11th Cir. 1994) (rejected on other grounds by, Montgomery v. Carr, 101 F.3d 1117, 114 Ed. Law Rep. 750, 1996 FED App. 0371P (6th Cir. 1996)).

Minn.—Cybyske v. Independent School Dist. No. 196, Rosemount-Apple Valley, 347 N.W.2d 256 (Minn. 1984) (associate for marriage is basic right).

18 Conn.—State v. Ortiz, 83 Conn. App. 142, 848 A.2d 1246 (2004).

19 U.S.—Estate of B.I.C. v. Gillen, 710 F.3d 1168 (10th Cir. 2013).

20 Fla.—P.O. v. Department of Children and Families, 117 So. 3d 878 (Fla. 4th DCA 2013).

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16B C.J.S. Constitutional Law § 1149

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1149. Extent of association right

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1445

The constitutional right of association affords the right of association with other persons for a variety of purposes.

The constitutional right of association affords the right of association with other persons for a variety of purposes,[1] and in general, the constitutional right to freely associate with others encompasses associational ties designed to further the social, legal, and economic benefit of a group's members[2] but does not extend to purely economic[3] or commercial group association.[4] The First Amendment does not protect against all deprivations arising out of an act of association unless the act itself, such as joining a church or political party, speaking out on matters of public interest, or advocacy of reform, falls within the scope of protected activities.[5]

Furthermore, such right of association generally extends to the liberty to enter associations with other individuals to promote an ideology,[6] a "way of life,"[7] or to advance or further beliefs[8] or ideas,[9] or to air grievances[10] free from governmental intrusion. Moreover, freedom to associate for advancement of political beliefs necessarily presupposes freedom to identify people who constitute the association and to limit association to those people only.[11]

The right to freedom of association is a right enjoyed by religious and secular groups alike.[12] Freedom to associate includes the right to belong to religious organizations[13] and advance religious beliefs.[14]

However, it has also been held that the right to freedom of association does not include a generalized right of social association.[15]

The right to freedom of association necessarily encompasses the right to privacy in one's associations, including religious associations.[16]

The Federal Constitution protects against the compelled disclosure of political associations and beliefs because such disclosure can seriously infringe on privacy of association and belief guaranteed by the First Amendment.[17] Infringement on privacy of association arises when the state compels disclosure by unpopular minority factions whose members could suffer adverse consequences from public exposure.[18] Thus, where an organization advocates views which might subject members to ridicule and denunciation from the mere fact of membership, the First Amendment associational rights are the basis for qualified privilege against disclosure of a membership list.[19] However, compelled disclosure of membership in religious organizations only violates the right of freedom of association if it brings adverse consequences on the members and, even where such adverse consequences exist, disclosure can still be required if it serves a compelling state interest.[20]

The First Amendment does not require the state to maintain policies that allow certain associations to thrive.[21]

Noncriminal and criminal associations.

An enactment which criminalizes ordinary associational conduct not constituting a breach of peace runs afoul of the Constitution and the knowing association with a group cannot be made a punishable act because some of the group members are engaged in criminal conduct.[22] On the other hand, the practice of associating with compatriots in crime is not a protected associational right,[23] and there is no protection of criminal associations,[24] associations for illegal purposes,[25] or associations made in the furtherance of a criminal conspiracy.[26] Moreover, freedom of association does not extend to joining with others for purpose of depriving third parties of their lawful rights.[27]

Mandatory associations.

Mandatory associations are permissible under the First Amendment only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.[28]

CUMULATIVE SUPPLEMENT

Cases:

Members of Oregon State Bar stated viable freedom of association claim by alleging that Bar included statements condemning white nationalism and the normalization of violence in its monthly publication, that those statements constituted political speech nongermane to Bar's role in regulating the legal profession, that, to practice law in Oregon, every lawyer had to join Bar, and that Bar's compelled membership requirement, independent of its compelled financial support requirement, violated their right to freely associate for expressive purposes. U.S. Const. Amends. 1, 14; Or. Rev. Stat. §§ 9.160(1), 9.200. Crowe v. Oregon State Bar, 989 F.3d 714 (9th Cir. 2021).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Sullivan v. Meade Independent School Dist. No. 101, 530 F.2d 799 (8th Cir. 1976); Swope v. Bratton, 541 F. Supp. 99 (W.D. Ark. 1982).

Peaceful, orderly change

Freedom of association tends to produce diversity of opinion that oils machinery of democratic government and insures peaceful, orderly change.

U.S.—Gilmore v. City of Montgomery, Ala., 417 U.S. 556, 94 S. Ct. 2416, 41 L. Ed. 2d 304 (1974).

2 U.S.—Sawyer v. Sandstrom, 615 F.2d 311 (5th Cir. 1980); International Union, United Auto., Aerospace and Agr. Implement Workers of America, and its Locals 1093, 558 and 25 v. National Right to Work Legal Defense and Ed. Foundation, Inc., 590 F.2d 1139, 26 Fed. R. Serv. 2d 582 (D.C. Cir. 1978).

N.J.—Application of Martin, 90 N.J. 295, 447 A.2d 1290 (1982).

Tex.—In re Bay Area Citizens Against Lawsuit Abuse, 982 S.W.2d 371 (Tex. 1998) (political, economic, religious or cultural matters).

Therapist-client relationship

Therapist-client relationship is not close-knit, intimate human relationship that receives protection as fundamental element of personal liberty under First Amendment freedom of association.

U.S.—Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2014), cert. denied, 134 S. Ct. 2881, 189 L. Ed. 2d 833 (2014) and cert. denied, 134 S. Ct. 2871, 189 L. Ed. 2d 833 (2014).

3 U.S.—Connecticut State Federation of Teachers v. Board of Ed. Members, 538 F.2d 471 (2d Cir. 1976).

4 Minn.—Metropolitan Rehabilitation Services, Inc. v. Westberg, 386 N.W.2d 698 (Minn. 1986).

5 U.S.—Rosaura Bldg. Corp. v. Municipality of Mayaguez, 778 F.3d 55, 90 Fed. R. Serv. 3d 1759 (1st Cir. 2015).

6 U.S.—U.S. v. International Business Machines Corp., 83 F.R.D. 92 (S.D. N.Y. 1979).

7 N.J.—Application of Martin, 90 N.J. 295, 447 A.2d 1290 (1982).

8 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); National Ass'n for Advancement of Colored People v. Alabama ex rel. Flowers, 377 U.S. 288, 84 S. Ct. 1302, 12 L. Ed. 2d 325 (1964).

Cal.—Aaron v. Municipal Court, 73 Cal. App. 3d 596, 140 Cal. Rptr. 849 (1st Dist. 1977).

N.J.—Application of Martin, 90 N.J. 295, 447 A.2d 1290 (1982).

Beliefs protected

(1) First Amendment protects association without regard to truth, popularity, or social utility of beliefs which are offered.

U.S.—National Ass'n for Advancement of Colored People v. Button, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).

(2) It is immaterial whether beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters.

U.S.—National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).

9 U.S.—Bates v. City of Little Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).

N.J.—Application of Martin, 90 N.J. 295, 447 A.2d 1290 (1982).

Wash.—Stephanus v. Anderson, 26 Wash. App. 326, 613 P.2d 533 (Div. 1 1980).

10 U.S.—Bates v. City of Little Rock, 361 U.S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); Familias Unidas v. Briscoe, 619 F.2d 391 (5th Cir. 1980).

11 La.—Louisiana Republican Party v. Foster, 674 So. 2d 225 (La. 1996).

12 U.S.—Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C., 132 S. Ct. 694, 181 L. Ed. 2d 650, 274 Ed. Law Rep. 774 (2012).

Ky.—Kirby v. Lexington Theological Seminary, 426 S.W.3d 597, 303 Ed. Law Rep. 1051 (Ky. 2014).

13 Mass.—Attorney General v. Bailey, 386 Mass. 367, 436 N.E.2d 139, 4 Ed. Law Rep. 834 (1982).

14 U.S.—Chess v. Widmar, 635 F.2d 1310 (8th Cir. 1980), decision aff'd, 454 U.S. 263, 102 S. Ct. 269, 70 L. Ed. 2d 440, 1 Ed. Law Rep. 13 (1981).

15 U.S.—City of Dallas v. Stanglin, 490 U.S. 19, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989); Wallace v. Texas Tech University, 80 F.3d 1042, 108 Ed. Law Rep. 1069 (5th Cir. 1996).

Cal.—People ex rel. Gallo v. Acuna, 14 Cal. 4th 1090, 60 Cal. Rptr. 2d 277, 929 P.2d 596 (1997).

Okla.—Callaway v. City of Edmond, 1990 OK CR 25, 791 P.2d 104 (Okla. Crim. App. 1990).

16 Mass.—Society of Jesus of New England v. Com., 441 Mass. 662, 808 N.E.2d 272 (2004).

17 Iowa—State v. Carter, 480 N.W.2d 850 (Iowa 1992).

18 Tenn.—Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

19 Tex.—Ex parte Lowe, 887 S.W.2d 1 (Tex. 1994).

20 Mass.—Society of Jesus of New England v. Com., 441 Mass. 662, 808 N.E.2d 272 (2004).

21 U.S.—Laborers Local 236, AFL-CIO v. Walker, 749 F.3d 628 (7th Cir. 2014).

22 U.S.—Sawyer v. Sandstrom, 615 F.2d 311 (5th Cir. 1980).

23 U.S.—U.S. v. Choate, 576 F.2d 165, 57 A.L.R. Fed. 678 (9th Cir. 1978).

24 Kan.—State v. Tran, 252 Kan. 494, 847 P.2d 680 (1993).

25 Ohio—State v. Talty, 103 Ohio St. 3d 177, 2004-Ohio-4888, 814 N.E.2d 1201 (2004).

26 Ind.—In re Original Investigation, Special Grand Jury of Marion County, 273 Ind. 120, 402 N.E.2d 962 (1980), decision clarified, 273 Ind. 133, 408 N.E.2d 537 (1980).

27 U.S.—Madsen v. Women's Health Center, Inc., 512 U.S. 753, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (1994).

Idaho—State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

28 U.S.—Knox v. Service Employees Intern. Union, Local 1000, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1150. Limitations and restrictions on right

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1445

The constitutional right of freedom of association is not an absolute or unconditional right and it is subject to reasonable regulations, restrictions, or rules.

The constitutional right of freedom of association is not an absolute[1] or unlimited[2] right. Not every limitation or incidental burden on the right to associate is unconstitutional,[3] and laws must have sufficiently substantial impact on conduct protected by First Amendment speech and association rights to render them overbroad.[4] In general, the constitutional right of freedom of association is subject to the legitimate exercise of the police power.[5] Thus, it is subject to reasonable regulations, restrictions, or rules,[6] for appropriate reasons,[7] such as in the interests of the general welfare,[8] to accomplish the essential needs of the State and public order,[9] to preserve public peace and order,[10] to prohibit violence or other types of activities that produce special harms such as significant physical injury,[11] or otherwise for reasons of a substantial and legitimate,[12] or compelling[13] governmental interest or overriding public interest.[14]

Nevertheless, a significant encroachment upon associational freedom cannot be justified upon a mere showing of a legitimate governmental interest.[15]

First Amendment and state constitutional articles guaranteeing the right of freedom of association do not apply to alleged restrictions imposed by private parties.[16]

Footnotes

1 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); Konigsberg v. State Bar of Cal., 366 U.S. 36, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961).

2 U.S.—Ealy v. Littlejohn, 569 F.2d 219 (5th Cir. 1978).
N.Y.—Curle v. Ward, 59 A.D.2d 286, 399 N.Y.S.2d 308 (3d Dep't 1977), judgment modified on other grounds, 46 N.Y.2d 1049, 416 N.Y.S.2d 549, 389 N.E.2d 1070 (1979).

3 Wis.—State ex rel. La Follette v. Democratic Party of U. S. of America, 93 Wis. 2d 473, 287 N.W.2d 519 (1980), judgment rev'd on other grounds, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981).
Okla.—In re Initiative Petition No. 341, State Question No. 627, 1990 OK 53, 796 P.2d 267 (Okla. 1990).

4 U.S.—City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 72 A.L.R.5th 665 (1999).
Idaho—State v. Cobb, 132 Idaho 195, 969 P.2d 244 (1998).

5 **Unreasonable infringement**
Exercise of police power may not unreasonably infringe upon freedom of association.
Haw.—State v. Shigematsu, 52 Haw. 604, 483 P.2d 997 (1971).

6 U.S.—Malone v. U.S., 502 F.2d 554 (9th Cir. 1974); Navis v. Henry, 456 F. Supp. 99 (E.D. Va. 1978).
Cal.—Laguna Royale Owners Assn. v. Darger, 119 Cal. App. 3d 670, 174 Cal. Rptr. 136 (4th Dist. 1981).

7 U.S.—Vincent v. Maeras, 447 F. Supp. 775 (S.D. Ill. 1978).

8 Cal.—Laguna Royale Owners Assn. v. Darger, 119 Cal. App. 3d 670, 174 Cal. Rptr. 136 (4th Dist. 1981).

9 U.S.—Malone v. U.S., 502 F.2d 554 (9th Cir. 1974).
Wyo.—Jones v. State, 2002 WY 35, 41 P.3d 1247, 99 A.L.R.5th 761 (Wyo. 2002) (essential needs of the state).

10 Cal.—Chambers v. Municipal Court, 65 Cal. App. 3d 904, 135 Cal. Rptr. 695 (1st Dist. 1977).

11 Md.—McKenzie v. State, 131 Md. App. 124, 748 A.2d 67, 143 Ed. Law Rep. 273 (2000).

12 U.S.—York County Fire Fighters Ass'n, Local 2498 v. York County, Va., 589 F.2d 775 (4th Cir. 1978).

13 Cal.—Socialist Workers etc. Committee v. Brown, 53 Cal. App. 3d 879, 125 Cal. Rptr. 915 (2d Dist. 1975).
Utah—Elks Lodges No. 719 (Ogden) and No. 2021 (Moab) v. Department of Alcoholic Beverage Control, 905 P.2d 1189 (Utah 1995).
As to compelling or overriding governmental interest justifying restriction of constitutional right of freedom of association, generally, see § 1151.

14 U.S.—U.S. v. Gopman, 542 F.2d 575 (5th Cir. 1976); In re Gopman, 531 F.2d 262 (5th Cir. 1976).

15 U.S.—Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973).
Cal.—Kelly v. State Personnel Bd., 94 Cal. App. 3d 905, 156 Cal. Rptr. 795 (3d Dist. 1979).

16 Idaho—Edmondson v. Shearer Lumber Products, 139 Idaho 172, 75 P.3d 733, 7 A.L.R.6th 841 (2003).

16B C.J.S. Constitutional Law § 1151

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

A. In General

§ 1151. Limitations and restrictions on right—Justified restriction

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440 to 1445

Governmental action that severely burdens on associational rights must be narrowly tailored to serve a compelling state interest, although when regulations impose lesser burdens, a state's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.

In view of the fundamental nature of the right to associate,[1] when a statute severely affects associational rights, such as when an organization is required to accept a member it does not desire, strict scrutiny applies[2] and regulations that impose severe burdens on associational rights must be narrowly tailored to serve a compelling state interest.[3] Such governmental interest must clearly outweigh the repressive effect on associational rights engendered by the governmental regulation,[4] and the burden is on government to show the existence of such an interest.[5] However, strict scrutiny is appropriate only if the burden on the right of association is severe.[6] When regulations impose lesser burdens, a state's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.[7]

To survive strict scrutiny, significant encroachments on the rights of association guaranteed by the First Amendment cannot be justified by a mere showing of some legitimate governmental interest.[8] There must be a substantial relation between the government action and the subject of the overriding and compelling state interest.[9]

A governmental regulation of the constitutional right of freedom of association must be unrelated to the suppression of ideas[10] and must be closely or narrowly drawn,[11] so as to avoid unnecessary abridgment of, or interference with, associational freedoms.[12] Regulations must involve no more infringement than is necessary[13] to the end that the intrusion be accomplished in the least restrictive manner possible.[14] Thus, only a regulation which impinges on the right to associate to the least degree possible consistent with the achievement of government's legitimate goals will pass constitutional muster.[15]

A challenged statute must be substantially overbroad to be invalidated on its face as prohibiting constitutionally protected conduct like the right of association.[16] A statute that is overbroad in that it sweeps within the ambit of constitutionally protected expressive or associational rights is unconstitutional.[17] Further, a statute is "facially overbroad" when it does not aim specifically at evils within the allowable area of government control but sweeps within its ambit other activities that constitute an exercise of protected expressive or associational rights.[18] If a law interferes with the right of association, a more stringent vagueness test applies[19] although perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.[20]

CUMULATIVE SUPPLEMENT

Cases:

Employers and business associations adequately alleged facts to support claims that a city ordinance which mandated that employers provide their employees with paid sick leave violated right-of-association clause, through infringing on an employer's right not to be a unionized employer operating with a collective bargaining agreement, where the plaintiffs alleged that the ordinance discriminated between unionized and non-unionized employers, as it only allowed unionized employers to modify yearly cap of paid sick leave. Tex. Const. art. 1, § 27; Tex. Const. art. 11, § 5. Texas Association of Business v. City of Austin, Texas, 565 S.W.3d 425 (Tex. App. Austin 2018), rule 53.7(f) motion granted, (Feb. 20, 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

2 S.C.—Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 746 S.E.2d 329 (2013).

3 U.S.—Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).
Justified infringements
(1) The right to associate for expressive purposes is not absolute; infringements on the right may be justified by regulations adopted to serve compelling state interests, unrelated to suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.
U.S.—U.S. Citizens Ass'n v. Sebelius, 705 F.3d 588 (6th Cir. 2013).
(2) In the context of public accommodations, laws and regulations that constrain associational freedom are subject to close scrutiny, and are permitted, under the First Amendment, only if they serve compelling state interests that are unrelated to the suppression of ideas—interests that cannot be advanced through significantly less restrictive means.

U.S.—Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838, 57 A.L.R. Fed. 2d 573 (2010).

Infringement justified

A statute prohibiting knowingly providing material support to foreign terrorist organizations did not violate the rights of association of organizations and individuals who allegedly sought to provide organizations that had been designated as foreign terrorist organizations with support for only lawful, nonviolent activities; the statute penalized the material support of, not a mere association with, a foreign terrorist organization, and any burden on the plaintiffs' freedom of association, in preventing them from providing support to designated terrorist organizations, but not to other groups, was justified.

U.S.—Holder v. Humanitarian Law Project, 561 U.S. 1, 130 S. Ct. 2705, 177 L. Ed. 2d 355, 49 A.L.R. Fed. 2d 567 (2010).

4 N.J.—New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. 57, 411 A.2d 168 (1980).

5 U.S.—Rhode Island Minority Caucus, Inc. v. Baronian, 590 F.2d 372 (1st Cir. 1979); Nixon v. Administrator of General Services, 408 F. Supp. 321 (D.D.C. 1976), judgment aff'd, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977).

La.—Babineaux v. Judiciary Commission, 341 So. 2d 396 (La. 1976).

6 U.S.—Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

7 U.S.—Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

8 U.S.—Davis v. Federal Election Com'n, 554 U.S. 724, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008).

9 Tex.—Ex parte Lowe, 887 S.W.2d 1 (Tex. 1994).

10 Nev.—Burgess v. Storey County Bd. of Com'rs, 116 Nev. 121, 992 P.2d 856 (2000).

Utah—Elks Lodges No. 719 (Ogden) and No. 2021 (Moab) v. Department of Alcoholic Beverage Control, 905 P.2d 1189 (Utah 1995).

11 Ky.—Associated Industries of Kentucky v. Com., 912 S.W.2d 947 (Ky. 1995).

Mass.—Opinion of the Justices to the House of Representatives, 418 Mass. 1201, 637 N.E.2d 213 (1994).

Tex.—Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000).

12 U.S.—Firestone v. Let's Help Florida, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).

Ky.—Associated Industries of Kentucky v. Com., 912 S.W.2d 947 (Ky. 1995).

Tex.—Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000).

13 Fla.—Winn-Dixie Stores, Inc. v. State, 408 So. 2d 211 (Fla. 1981).

14 U.S.—Gavett v. Alexander, 477 F. Supp. 1035 (D.D.C. 1979).

Ill.—Chicago Bd. of Ed. v. Terrile, 47 Ill. App. 3d 75, 5 Ill. Dec. 455, 361 N.E.2d 778 (1st Dist. 1977).

Nev.—Burgess v. Storey County Bd. of Com'rs, 116 Nev. 121, 992 P.2d 856 (2000) (cannot be achieved through means significantly less restrictive of associational freedoms).

N.J.—Application of Martin, 90 N.J. 295, 447 A.2d 1290 (1982).

15 Alaska—Vogler v. Miller, 651 P.2d 1 (Alaska 1982).

16 Mo.—Turner v. Missouri Dept. of Conservation, 349 S.W.3d 434 (Mo. Ct. App. S.D. 2011).

17 Md.—Todd v. State, 161 Md. App. 332, 868 A.2d 944 (2005).

Ohio—In re E.D., 194 Ohio App. 3d 534, 2011-Ohio-4067, 957 N.E.2d 80 (9th Dist. Summit County 2011).

18 Del.—State v. Baker, 720 A.2d 1139 (Del. 1998).

19 U.S.—Thayer v. City of Worcester, 755 F.3d 60 (1st Cir. 2014).

Nev.—Carrigan v. Commission on Ethics of State, 313 P.3d 880, 129 Nev. Adv. Op. No. 95 (Nev. 2013).

20 U.S.—Thayer v. City of Worcester, 755 F.3d 60 (1st Cir. 2014).

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16B C.J.S. Constitutional Law IV XIII B Refs.

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

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Research References

A.L.R. Library

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16B C.J.S. Constitutional Law § 1152

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

1. Labor Matters

§ 1152. Associational rights and labor matters, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1449

The constitutional protection of associational rights extends to labor union activities, and it includes union membership generally, together with the right to join a union.

In general, included in the First Amendment right to free association is the right of employees to associate in unions.[1] Thus, union membership is protected by the right of association under the First and the Fourteenth Amendments.[2] So, the constitutional protection of associational rights extends to labor union activities,[3] and it includes union membership generally,[4] together with the right to unionize[5] or form[6] and/or join,[7] or belong to[8] a union unless there is some illegal intent.[9] There is no violation of the right of association where the deprivation of an employee's rights is not caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible.[10] However, associational rights that would otherwise be protected may be regulated if necessary to protect substantial rights of employees or to preserve harmonious labor-management relations in the public interest, but such regulatory action must proceed with caution.[11]

In general, there is no constitutional right to have an employer agree to bargain collectively[12] or to sign a contract,[13] and the Constitution does not secure the right of a member of a labor organization to work only under a collective bargaining agreement.[14] Labor unions which are authorized to collect "agency fees" from workers who are not union members as a condition of their employment may not collect and disburse such fees for purposes other than collective bargaining, contract administration, and grievance adjustment without seriously implicating the associational rights of those workers who object.[15] Whether an employee's constitutional right to freedom of association has been violated by forcing him or her to support a union cannot depend on whether other employees are similarly coerced.[16]

Statutes, or governmental actions or requirements, do not violate the constitutional right of freedom of association of a union or of a worker where the burdens imposed on associational rights are outweighed by countervailing governmental interests.[17]

CUMULATIVE SUPPLEMENT

Cases:

Allegations in contractor's complaint, that despite fact that it had submitted lowest responsible bid to construct new firehouse, the fire protection district had awarded contract to another company whose employees were represented by labor union which, unlike union representing contractor's employees, was affiliated with national labor organization, did not state plausible First Amendment claim for alleged violation its right to associate with labor union representing its workers or with workers themselves; contractor did not provide any plausible account of how district had interfered with its ability to associate with union or with its employees who were members of union. U.S.C.A. Const.Amend. 1. Higgins Electric, Inc. v. O'Fallon Fire Protection Dist., 813 F.3d 1124 (8th Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—State Emp. Bargaining Agent Coalition v. Rowland, 718 F.3d 126 (2d Cir. 2013), cert. dismissed, 134 S. Ct. 893, 187 L. Ed. 2d 699 (2014) and cert. denied, 134 S. Ct. 1002, 187 L. Ed. 2d 863 (2014); Sweeney v. Pence, 767 F.3d 654 (7th Cir. 2014).

2 U.S.—American Federation of State, County, and Municipal Emp., AFL-CIO v. Woodward, 406 F.2d 137 (8th Cir. 1969); Service Emp. Intern. Union, AFL-CIO v. Butler County, Pa., 306 F. Supp. 1080 (W.D. Pa. 1969).

3 U.S.—Connecticut State Federation of Teachers v. Board of Ed. Members, 538 F.2d 471 (2d Cir. 1976); Local 2263, Intern. Ass'n of Fire Fighters AFL-CIO v. City of Tupelo, Miss., 439 F. Supp. 1224 (N.D. Miss. 1977).

4 U.S.—Greminger v. Seaborne, 584 F.2d 275 (8th Cir. 1978); Service Emp. Intern. Union, AFL-CIO v. Butler County, Pa., 306 F. Supp. 1080 (W.D. Pa. 1969).

5 U.S.—O'Brien v. Leidinger, 452 F. Supp. 720 (E.D. Va. 1978).

6 U.S.—McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

7 U.S.—McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968); Bateman v. South Carolina State Ports Authority, 298 F. Supp. 999 (D.S.C. 1969).

8 U.S.—Florida AFL-CIO v. State of Fla. Dept. of Labor and Employment Sec., 676 F.2d 513 (11th Cir. 1982); Clifford v. Moritz, 472 F. Supp. 1094 (S.D. Ohio 1979).

9 U.S.—McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

10 **Agency shop clause**
U.S.—Kolinske v. Lubbers, 712 F.2d 471 (D.C. Cir. 1983).

11 U.S.—International Union, United Auto., Aerospace and Agr. Implement Workers of America, and its Locals 1093, 558 and 25 v. National Right to Work Legal Defense and Ed. Foundation, Inc., 590 F.2d 1139, 26 Fed. R. Serv. 2d 582 (D.C. Cir. 1978).

12 U.S.—Clifford v. Moritz, 472 F. Supp. 1094 (S.D. Ohio 1979).
Ind.—Michigan City Area Schools v. Siddall, 427 N.E.2d 464 (Ind. Ct. App. 1981).

13 U.S.—Clifford v. Moritz, 472 F. Supp. 1094 (S.D. Ohio 1979).

14 U.S.—Florida AFL-CIO v. State of Fla. Dept. of Labor and Employment Sec., 676 F.2d 513 (11th Cir. 1982).

15 U.S.—Beck v. Communications Workers of America (C.W.A.), 468 F. Supp. 93 (D. Md. 1979).
N.J.—Matter of Board of Educ. of Town of Boonton, 99 N.J. 523, 494 A.2d 279, 25 Ed. Law Rep. 1169 (1985) (must use for collective negotiations or conditions of employment).

Collective bargaining agreement

A collective bargaining agreement requiring all employees to pay full union dues regardless of whether they joined the union, unless they followed the opt-out procedure by notifying the union of an intent to refrain from paying dues unrelated to labor-management negotiations, did not constitute a "state action," for purpose of an employee's claim against the union that opt-out procedure violated his First Amendment rights not to associate.

U.S.—White v. Communications Workers of America, AFL-CIO, Local 1300, 370 F.3d 346 (3d Cir. 2004).

16 U.S.—Horwath v. N.L.R.B., 539 F.2d 1093 (7th Cir. 1976).

17 U.S.—International Organization of Masters, Mates and Pilots, AFL-CIO v. N. L. R. B., 575 F.2d 896 (D.C. Cir. 1978).

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16B C.J.S. Constitutional Law § 1153

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

1. Labor Matters

§ 1153. Public employees' association rights

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1446, 1449, 1472 to 1475

The right of association encompasses public employees' union membership.

The right of association encompasses public employees' union membership[1] and labor union associations,[2] together with the right to join a union.[3] Nonetheless, the Constitution does not impose an affirmative obligation on public employers to either recognize, bargain with, or otherwise respond to, employees' organizations.[4]

In general, public employment cannot be denied on the basis of union membership;[5] it may not be subject to the surrender of the right of association;[6] and public employees cannot be discharged for engaging in union activities.[7] However, where employees of public employers have no constitutional right to strike, it has been held that termination of their employment for participation in a strike does not infringe upon their constitutional rights of association.[8]

The heightened scrutiny requirement applies to employment decisions based on union membership, on employees' claims under the First Amendment right to freedom of association.[9] Conditioning public employment on union membership, no less than

on political association, inhibits protected association and interferes with government employees' freedom to associate, and therefore, it is subject to the same strict scrutiny under the First Amendment and may be done only in the most compelling circumstances.[10]

The courts have determined that various statutes or ordinances, or governmental actions, rules, regulations, or requirements, relating to union activities of public employees generally do not violate the constitutional right of freedom of association of such public employees[11] as where it has been determined that a specific governmental interest justifies prohibiting certain public employees from joining a union of rank and file public employees, and the regulation to achieve the governmental end is narrowly drawn.[12] On the other hand, the courts have held that various other statutes or governmental rules relating to union activities of public employees generally do violate the constitutional right of freedom of association of such public employees.[13]

CUMULATIVE SUPPLEMENT

Cases:

The State may require that a union serve as exclusive bargaining agent for its employees, a significant impingement on First Amendment associational freedoms that would not be tolerated in other contexts. U.S.C.A. Const.Amend. 1. Janus v. American Federation of State, County, and Mun. Employees, Council 31, 138 S. Ct. 2448 (2018).

A public employer's generalized interest in doing business-as-usual does not constitute a legitimate non-discriminatory reason for its actions that affect the exercise of employees' constitutional rights, and cannot categorically outweigh an employee's interest in associating with a union under the First Amendment; this is particularly true where the institution asserting such an interest has explicitly sanctioned the existence of the union and the grievance procedure it employs by entering into a collective bargaining agreement. U.S. Const. Amend. 1. Baloga v. Pittston Area School District, 927 F.3d 742 (3d Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Norbeck v. Davenport Community School Dist., 545 F.2d 63 (8th Cir. 1976).

2 U.S.—Elk Grove Firefighters Local No. 2340 v. Willis, 400 F. Supp. 1097 (N.D. Ill. 1975), aff'd, 539 F.2d 714 (7th Cir. 1976).

3 U.S.—Castleberry v. Langford, 428 F. Supp. 676 (N.D. Tex. 1977).

4 U.S.—Smith v. Arkansas State Highway Emp., Local 1315, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979).
Md.—Charles County Supporting Services Emp. Local Union 301 v. Board of Ed. of Charles County, 48 Md. App. 339, 427 A.2d 1025 (1981).
Pa.—Philadelphia Fraternal Order of Correctional Officers v. Rendell, 558 Pa. 229, 736 A.2d 573 (1999).
Municipal employer
General employees have no constitutional right to negotiate with their municipal employer on the lone issue of base wages, let alone on any other subject; while the public employee surely can associate and speak freely and petition openly, and he or she is protected by the First Amendment from retaliation for doing so, the First Amendment does not impose any affirmative obligation on the government to listen, to respond, or in this context, to recognize the association and bargain with it.
Wis.—Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (2014).

5 U.S.—American Federation of State, County, and Municipal Emp., AFL-CIO v. Woodward, 406 F.2d 137 (8th Cir. 1969).

6 N.Y.—Board of Ed., Central School Dist. No. 1 of Town of Grand Island, Erie County v. Helsby, 37 A.D.2d 493, 326 N.Y.S.2d 452 (4th Dep't 1971), order aff'd, 32 N.Y.2d 660, 343 N.Y.S.2d 131, 295 N.E.2d 797 (1973).

7 U.S.—Hanover Tp. Federation of Teachers, Local 1954 (AFL-CIO) v. Hanover Community School Corp., 457 F.2d 456 (7th Cir. 1972).

8 **Rights and privileges**

That public employees do not have legal right to strike does not mean that such employees have any less rights and privileges under Constitution than other citizens, for they, like all citizens, enjoy all of rights and privileges of Constitution, including the freedom to associate for the advancement of beliefs and ideas.

U.S.—Johnson v. City of Albany, Ga., 413 F. Supp. 782 (M.D. Ga. 1976).

9 U.S.—State Emp. Bargaining Agent Coalition v. Rowland, 718 F.3d 126 (2d Cir. 2013), cert. dismissed, 134 S. Ct. 893, 187 L. Ed. 2d 699 (2014) and cert. denied, 134 S. Ct. 1002, 187 L. Ed. 2d 863 (2014).

10 U.S.—State Emp. Bargaining Agent Coalition v. Rowland, 718 F.3d 126 (2d Cir. 2013), cert. dismissed, 134 S. Ct. 893, 187 L. Ed. 2d 699 (2014) and cert. denied, 134 S. Ct. 1002, 187 L. Ed. 2d 863 (2014).

11 U.S.—Smith v. Arkansas State Highway Emp., Local 1315, 441 U.S. 463, 99 S. Ct. 1826, 60 L. Ed. 2d 360 (1979).

Mich.—Local 79, Service Emp. Intern. Union, AFL-CIO, Hospital Emp. Division v. Lapeer County General Hospital, 111 Mich. App. 441, 314 N.W.2d 648 (1981).

No violation

A state statute prohibiting municipal employers from reaching binding agreements with their general employees on a collective basis if the agreement concerns anything other than the employees' base wages does not violate the right of association protected by the First Amendment, as nothing in that statute prohibits unions representing municipal employees from forming, meeting, or organizing, the rights which are affirmatively protected by a separate statute, and none of its provisions disadvantage employees who choose to join a union.

U.S.—Laborers Local 236, AFL-CIO v. Walker, 749 F.3d 628 (7th Cir. 2014).

12 U.S.—Elk Grove Firefighters Local No. 2340 v. Willis, 400 F. Supp. 1097 (N.D. Ill. 1975), aff'd, 539 F.2d 714 (7th Cir. 1976); Local 2263, Intern. Ass'n of Fire Fighters AFL-CIO v. City of Tupelo, Miss., 439 F. Supp. 1224 (N.D. Miss. 1977).

13 U.S.—Atkins v. City of Charlotte, 296 F. Supp. 1068 (W.D. N.C. 1969).

Compulsory union fees

When a state establishes an "agency shop" that exacts compulsory union fees as a condition of public employment, the dissenting employee is forced to support financially an organization with whose principles and demands he or she may disagree, and because a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights.

U.S.—Knox v. Service Employees Intern. Union, Local 1000, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

1. Labor Matters

§ 1154. Teachers' and other public school employees' association rights

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1446, 1449, 1472 to 1475

The general rule that the right of association encompasses public employees' union membership extends to teachers.

The general rule that the right of association encompasses public employees' union membership extends to teachers[1] and other public school employees.[2] Nevertheless, it has been held that the right of association of teachers does not require that state governmental units negotiate and enter into contracts with them.[3]

The courts have adjudicated that various statutes, or governmental actions or regulations, relating to union activities concerning teachers or other public school employees do not violate the constitutional right of freedom of association of such public employees,[4] including statutes prohibiting public employees from striking[5] and denying dues deduction privileges to a minority union local[6] or a wage deduction for teacher federation dues.[7]

Footnotes

1 U.S.—Norbeck v. Davenport Community School Dist., 545 F.2d 63 (8th Cir. 1976).
N.Y.—Tischler v. Board of Ed. of Monroe Woodbury Central School Dist. No. 1, 37 A.D.2d 261, 323 N.Y.S.2d 508 (2d Dep't 1971).

2 U.S.—Norbeck v. Davenport Community School Dist., 545 F.2d 63 (8th Cir. 1976).
Ind.—Michigan City Area Schools v. Siddall, 427 N.E.2d 464 (Ind. Ct. App. 1981).
As to teachers' and public school employees' right of association, generally, see § 1163.

3 U.S.—Winston-Salem/Forsyth County Unit of North Carolina Ass'n of Educators v. Phillips, 381 F. Supp. 644 (M.D. N.C. 1974).

4 U.S.—Minnesota State Bd. for Community Colleges v. Knight, 465 U.S. 271, 104 S. Ct. 1058, 79 L. Ed. 2d 299, 15 Ed. Law Rep. 1050 (1984); Alabama State Federation of Teachers, AFL-CIO v. James, 656 F.2d 193 (5th Cir. 1981).

5 N.Y.—Zeluck v. Board of Ed. of City School Dist. of City of New Rochelle, 62 Misc. 2d 274, 307 N.Y.S.2d 329 (Sup 1970), order aff'd, 36 A.D.2d 615, 319 N.Y.S.2d 409 (2d Dep't 1971).

6 U.S.—Connecticut State Federation of Teachers v. Board of Ed. Members, 538 F.2d 471 (2d Cir. 1976).

7 Ind.—Lawrence v. Ball State University Bd. of Trustees, 400 N.E.2d 179 (Ind. Ct. App. 1980).
State statute
State and national teachers' unions could, without violating First Amendment right not to associate with labor organization, charge nonmember teachers fees under Pennsylvania Fair Share Act for collective bargaining-related litigation costs incurred on behalf of another bargaining unit pursuant to expense-pooling arrangement with the other bargaining unit.
U.S.—Otto v. Pennsylvania State Educ. Association-NEA, 330 F.3d 125, 176 Ed. Law Rep. 570 (3d Cir. 2003).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

2. Political Matters

§ 1155. Freedom of association for political purposes, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1460, 1465, 1470, 1476 to 1482

The constitutional right of freedom of association includes the right to associate for political purposes.

Political belief and association constitute the core of those activities protected by the First Amendment.[1] The First Amendment safeguards an individual's right to participate in the public debate through political expression and political association,[2] and, among other things, protects the right of citizens to band together in promoting among the electorate candidates who espouse their political views.[3] Thus, the First Amendment protects the right of citizens to associate and to form political parties for advancement of common political goals and ideas[4] with the political party of one's choice[5] to advance common political goals and ideas.[6] In general, however, the right to participate in political activities is not absolute,[7] and not every interference with the right of political association violates the constitutional command.[8]

Nevertheless, a restriction on the right of individuals to associate for the advancement of political beliefs is subject to strict judicial scrutiny.[9] However, even a significant interference with the protected rights of a political association may be sustained if government demonstrates a sufficiently important,[10] or compelling,[11] governmental interest and employs means narrowly

tailored,[12] no broader than needed to accomplish governmental interest,[13] or closely drawn to avoid unnecessary abridgment of associational freedoms.[14] Further, there must be no less restrictive means available for satisfying such legitimate and compelling governmental interest.[15] Where a burden on First Amendment associational rights occasioned by an election law is not severe, the State need not proffer a narrowly tailored regulation that advances a compelling state interest, as instead, important regulatory interests provide a sufficient justification.[16]

In general, constitutionally protected political associational activity includes membership in organizations having illegal purposes, unless such purposes are individually known, and a specific intent is entertained to accomplish those purposes.[17] Thus, one has a constitutionally protected right to belong to political groups embracing both legal and illegal aims so long as one does not intend to engage in acts in furtherance of their unlawful purposes.[18]

The right to freedom of association prohibits compelled disclosure of political groups engaged in political activity.[19]

Party's right of political association.

In general, a national political party enjoys a constitutionally protected right of political association,[20] and any interference with that right is an interference with the rights of the party[21] and the party's adherents.[22] Furthermore, a political party's right to govern itself[23] and manage its internal affairs is protected by its members' constitutional right of freedom of association.[24] Freedom of association encompasses a political party's decisions about the identity of and process for electing its leaders.[25] A political party has a First Amendment associational right to limit its membership as it wishes and to choose a candidate-selection process that will, in its view, produce a nominee who best represents its political platform.[26]

The interest of a state must be compelling to justify an abridgment of the exercise by a party of its constitutionally protected rights of association, and it has been held that a state's interest in protecting the integrity of its electoral process cannot be deemed compelling in the context of the selection of delegates to the national party convention.[27] Further, a state's ban on primary endorsements by political parties, absent a compelling governmental interest, violates the right of freedom of association.[28]

Unions.

The First Amendment does not permit a union to compel nonmembers to support such political activities as "lobbying the electorate," which is another term for supporting political causes and candidates.[29]

CUMULATIVE SUPPLEMENT

Cases:

House Select Committee on Intelligence's subpoena compelling bank to produce records regarding political opposition research firm's financial transactions with clients and contractors, in connection with Committee's investigation into Russian interference with United States presidential election, did not violate firm's First Amendment associational rights, although firm asserted that subpoena hindered firm's ability to associate anonymously with its clients thereby chilling firm's protected political activity, since constitutional freedom of association did not protect firm's financial records, as firm's commercial relationship with clients was not political in nature, and Committee assured that subpoenaed records would be maintained in confidence and was presumed to act in good faith. U.S. Const. Amend. 1. Bean LLC v. John Doe Bank, 291 F. Supp. 3d 34 (D.D.C. 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Montone v. City of Jersey City, 709 F.3d 181 (3d Cir. 2013).

2 U.S.—McCutcheon v. Federal Election Com'n, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014).

3 U.S.—Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

4 U.S.—Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997); Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986).
La.—Louisiana Republican Party v. Foster, 674 So. 2d 225 (La. 1996).
Okla.—In re Initiative Petition No. 341, State Question No. 627, 1990 OK 53, 796 P.2d 267 (Okla. 1990).
Wis.—Elections Bd. of State of Wis. v. Wisconsin Mfrs. & Commerce, 227 Wis. 2d 650, 597 N.W.2d 721 (1999).
Right of fundamental significance
Vt.—Trudell v. State, 193 Vt. 515, 2013 VT 18, 71 A.3d 1235 (2013).
Integral part of freedom
The right to associate with the political party of one's choice is an integral part of the basic constitutional freedom to associate with others for the common advancement of political beliefs and ideas protected by the First Amendment.
U.S.—Garcia-Gonzalez v. Puig-Morales, 761 F.3d 81 (1st Cir. 2014).
Partisan political organization
Fundamental right of freedom of association protected by the First and Fourteenth Amendments includes the right of persons to engage in partisan political organization.
La.—Shane v. Parish of Jefferson, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).

5 U.S.—Eu v. San Francisco County Democratic Cent. Committee, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989); Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973).

6 U.S.—Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997); Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973).
Wis.—Elections Bd. of State of Wis. v. Wisconsin Mfrs. & Commerce, 227 Wis. 2d 650, 597 N.W.2d 721 (1999).
Freedom to identify people and limit association
Freedom to associate for common advancement of political beliefs necessarily presupposes freedom to identify people who comprise association and to limit association to those people only.
U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981).
Ala.—Alabama Republican Party v. McGinley, 893 So. 2d 337 (Ala. 2004).
Orderly group activity
Right of freedom to associate with others for the common advancement of political beliefs is a form of orderly group activity protected by the First and Fourteenth Amendments.
La.—Shane v. Parish of Jefferson, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).

7 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
Ill.—Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).
Right to associate for political purposes through ballot not absolute
N.Y.—Walsh v. Katz, 17 N.Y.3d 336, 929 N.Y.S.2d 515, 953 N.E.2d 753 (2011).

8 N.Y.—Nicholson v. State Commission on Judicial Conduct, 50 N.Y.2d 597, 431 N.Y.S.2d 340, 409 N.E.2d 818 (1980).

9 U.S.—Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975).

Minn.—Minnesota Fifth Congressional Dist. Independent-Republican Party v. State ex rel. Spannaus, 295 N.W.2d 650 (Minn. 1980).

10 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

11 U.S.—Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).
Alaska—VECO Intern., Inc. v. Alaska Public Offices Com'n, 753 P.2d 703 (Alaska 1988).
W. Va.—State ex rel. Billings v. City of Point Pleasant, 194 W. Va. 301, 460 S.E.2d 436 (1995).

12 U.S.—Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).

13 Alaska—VECO Intern., Inc. v. Alaska Public Offices Com'n, 753 P.2d 703 (Alaska 1988).

14 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

15 W. Va.—State ex rel. Billings v. City of Point Pleasant, 194 W. Va. 301, 460 S.E.2d 436 (1995).

16 Vt.—Trudell v. State, 193 Vt. 515, 2013 VT 18, 71 A.3d 1235 (2013).

17 Wash.—Hughes v. Kramer, 82 Wash. 2d 537, 511 P.2d 1344 (1973).

18 U.S.—Green v. Connally, 330 F. Supp. 1150 (D.D.C. 1971), judgment aff'd, 404 U.S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971).

19 La.—Shane v. Parish of Jefferson, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).

Right of association impacted

Freedom of Information Act (FOIA) impacted the First Amendment right of association of a publicly funded nonprofit corporation engaged in political advocacy where the FOIA required the corporation to disclose records including membership lists, and the FOIA's open meeting requirement impaired the corporation's ability to effectively associate for the purpose of political and issue advocacy by requiring that all meetings be open to the public.

S.C.—Disabato v. South Carolina Ass'n of School Adm'rs, 404 S.C. 433, 746 S.E.2d 329 (2013).

20 U.S.—Eu v. San Francisco County Democratic Cent. Committee, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989); Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); Cousins v. Wigoda, 419 U.S. 477, 95 S. Ct. 541, 42 L. Ed. 2d 595 (1975).

21 U.S.—Eu v. San Francisco County Democratic Cent. Committee, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989).

22 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981).
Minn.—Minnesota Fifth Congressional Dist. Independent-Republican Party v. State ex rel. Spannaus, 295 N.W.2d 650 (Minn. 1980).

23 Mo.—State ex rel. Tompras v. Board of Election Com'rs of St. Louis County, 136 S.W.3d 65 (Mo. 2004).

24 U.S.—Hunt v. Democratic Party of Oklahoma, 439 F. Supp. 788 (N.D. Okla. 1977); Fahey v. Darigan, 405 F. Supp. 1386 (D.R.I. 1975).

25 U.S.—Eu v. San Francisco County Democratic Cent. Committee, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989).
Ill.—Lenehan v. Township Officers Electoral Bd. of Schaumburg Tp., 2013 IL App (1st) 130619, 370 Ill. Dec. 647, 988 N.E.2d 1003 (App. Ct. 1st Dist. 2013).

26 U.S.—New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008).

As to nominating process and primary elections as affecting political party's associational rights, see § 1157.

Party's right not extending to individual candidates

A political party's First Amendment associational rights to structure its internal party processes and to select judicial candidates of the party's choosing did not extend to individual candidates so as to confer upon the candidates any associational right not only to join, but to have certain a degree of influence in, the party.

U.S.—New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008).

27 U.S.—Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981); Cousins v. Wigoda, 419 U.S. 477, 95 S. Ct. 541, 42 L. Ed. 2d 595 (1975).

28 U.S.—Eu v. San Francisco County Democratic Cent. Committee, 489 U.S. 214, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989).

29 U.S.—Knox v. Service Employees Intern. Union, Local 1000, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

2. Political Matters

§ 1156. Public employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1472 to 1475

Except to the extent that some statute validly restricts political activity by public employees, such individuals enjoy the same right of political association, on their own time, as anyone else.

Except to the extent that some statute validly restricts political activity by public employees,[1] a public employee's rights to political expression and association are protected by the First Amendment.[2] Such individuals enjoy the same right of political association, on their own time, as anyone else,[3] and the freedom of political association of public employees is protected even if they do not have tenure or some other property right in their jobs.[4] Nevertheless, public employees may be subject to restrictions on the exercise of rights of political association beyond that permissible if applied to private citizens.[5]

Ordinarily, however, a public employer may not condition continuation of public employment on an employee's relinquishment of the constitutional liberty of political association.[6]

CUMULATIVE SUPPLEMENT

Cases:

A public agency employer can defeat liability for a First Amendment political discrimination claim by showing that the public employee's position was obtained in violation of the law and that, even if political animus was a factor, the employer would have taken corrective action anyway against every employee whose position was obtained in violation of law. U.S.C.A. Const.Amend. 1. Reyes-Orta v. Puerto Rico Highway and Transp. Authority, 811 F.3d 67 (1st Cir. 2016).

For purposes of a public employee's § 1983 action against a state employer based on alleged retaliation in violation of the employee's First Amendment free speech rights, an employee's First Amendment interest in expressing support for a candidate for election to public office will, in most circumstances, outweigh the employer's interest in the efficient accomplishment of the public responsibilities of the agency. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983. Lynch v. Ackley, 811 F.3d 569 (2d Cir. 2016).

Defendants may rebut evidence that a public employee's speech was at least a motivating factor in an employer's decision to take adverse action against him by demonstrating that they would have taken the same action even if the protected conduct had not occurred, in an employee's action alleging violation of his First Amendment right to be free from discrimination based on his political association. U.S.C.A. Const.Amend. 1. Bisluk v. Hamer, 800 F.3d 928 (7th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Shakman v. Democratic Organization of Cook County, 435 F.2d 267 (7th Cir. 1970).

2 U.S.—Hager v. Pike County Bd. of Educ., 286 F.3d 366, 163 Ed. Law Rep. 606 (6th Cir. 2002).

3 U.S.—Shakman v. Democratic Organization of Cook County, 435 F.2d 267 (7th Cir. 1970).

4 U.S.—Tanner v. McCall, 441 F. Supp. 503 (M.D. Fla. 1977).

5 Ga.—Galer v. Board of Regents of the University System, 239 Ga. 268, 236 S.E.2d 617 (1977).

6 U.S.—Dallas County, Texas v. Barrett, 456 U.S. 936, 102 S. Ct. 1992, 72 L. Ed. 2d 455 (1982); Barrett v. Thomas, 649 F.2d 1193 (5th Cir. 1981).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

2. Political Matters

§ 1157. Access to ballot; association rights of candidates

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1464, 1466 to 1468

In general, restrictions on access to the ballot burden the fundamental right of individuals to associate for the advancement of political beliefs.

In general, restrictions on access to the ballot burden the fundamental right of individuals to associate for the advancement of political beliefs,[1] and eligibility restrictions on candidacy for public office impair the right of electors to vote for the candidate of their choice, which is protected by the right of persons to associate.[2] Furthermore, restrictions upon access of political parties to a ballot impinge upon rights of individuals to associate for political purposes and rights of qualified voters to cast their votes effectively.[3] The constitutional right of freedom to associate provides candidates with a limited right of access to the ballot, which is integral to the right to vote.[4] Although a regulation of who can appear on a ballot inevitably affects free speech, association, and voting rights, a court will uphold restrictions that impose only a lesser burden on those rights so long as they are reasonably related to the State's important regulatory interest.[5] Thus, not all infringements of a state constitutional right to ballot access warrant strict scrutiny, as strict scrutiny is warranted only when this associational right is severely burdened.[6]

The right to become a candidate for public office is a fundamental right, and one aspect of this right is its protection under concepts of freedom of expression and freedom of association inherent in federal and state constitutions.[7] Candidates for political office enjoy both a right to participate equally in the electoral process and to associate with one another to achieve policy goals, and in theory and in practice, these rights intertwine with those of voters to associate with one another and cast their ballots as they see fit.[8] One court has said, however, that standing alone, candidacy for public office is not expressive speech or conduct nor does it alone implicate acts of association or assembly and, thus, is not protected by the First Amendment.[9] While under this view, the status of candidacy for public office itself enjoys no First Amendment protection, a candidate's activities and associations, the organizing of supporters, and speaking and publishing on matters of public interest, receive the highest degree of First Amendment protections.[10]

The right to be a candidate for office, however, is not absolute,[11] and not all restrictions on candidates' eligibility for the ballot impose constitutionally suspect burdens.[12] The government has a legitimate interest in restricting access to the ballot in order to ensure that elections are run fairly and effectively[13] and to maintain the integrity of the ballot and to preserve an orderly election process.[14] Residency requirements for state legislature candidates, for example, do not violate a prospective candidate's freedom of association or state constitutional right of political participation.[15] A political party's associational rights have been held to encompass its decision to exclude a candidate from a primary ballot because the candidate's political beliefs are inconsistent with those of the party; such action is an appropriate exercise of the party's freedom to associate with persons of common political beliefs.[16] Nonetheless, such restrictions must be carefully scrutinized,[17] and a mere showing of a legitimate governmental interest is insufficient.[18] Rather, in order to justify such restrictions, the government must establish that its regulation of the ballot is necessary to serve a compelling interest[19] and that the means used is the least drastic means available to achieve such interest.[20] That a particular individual may not appear on the ballot as a particular party's candidate does not severely burden that party's associational rights.[21]

CUMULATIVE SUPPLEMENT

Cases:

Connecticut's ballot access law, requiring candidates for minor political parties to obtain number of signatures equal to one percent of votes cast for same office in last preceding election or 7500 signatures, whichever number was less, did not impose a severe burden on voting rights, and thus, strict scrutiny standard did not apply, and law was only required to serve state's important interests, in order to comply with First and Fourteenth Amendments; reasonably diligent candidates could be expected to satisfy the signature requirement. Conn. Gen. Stat. Ann. §§ 9-372(6), 9-379. Libertarian Party of Connecticut v. Lamont, 977 F.3d 173 (2d Cir. 2020).

The level of scrutiny with which courts review a ballot-access restriction depends on the extent of its imposition: the more severely it burdens constitutional rights, the more rigorous the inquiry into its justifications. Acevedo v. Cook County Officers Electoral Board, 925 F.3d 944 (7th Cir. 2019).

In general, ballot-access petition deadlines earlier than spring of election year are problematic even when coupled with a generally permissible 10,000 signature requirement. Libertarian Party of Arkansas v. Thurston, 962 F.3d 390 (8th Cir. 2020).

Ballot-access requirements implicate right of individuals to associate for advancement of political beliefs, and right of qualified voters, regardless of their political persuasion, to cast their votes effectively. U.S. Const. Amends. 1, 14. Cowen v. Georgia Secretary of State, 960 F.3d 1339 (11th Cir. 2020).

Montana's ballot access laws, which required independent or minor party candidates to obtain signatures on their nominating petitions totaling at least five percent of the votes cast for the last successful candidate for the United States House of Representatives office, or 14,268 signatures, in order to appear on ballot for special election for House of Representatives seat, placed severe burden on First and Fourteenth Amendment rights of candidates to associate and to participate in political process and of voters to support independent or minor party candidates, and thus, laws were required to be narrowly tailored to advance compelling state interest in order to survive constitutional scrutiny; candidates were required to collect large number of signatures in 46 days, and Montana's winter conditions during the relevant time period presented additional obstacles for collecting signatures. U.S. Const. Amend. 1; Mont. Code Ann. §§ 13-10-502, 13-25-205(2). Breck v. Stapleton, 259 F. Supp. 3d 1126 (D. Mont. 2017), stay pending appeal denied, 2017 WL 1376770 (D. Mont. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).
Alaska—State, Division of Elections v. Metcalfe, 110 P.3d 976 (Alaska 2005).
Me.—Nader v. Maine Democratic Party, 2012 ME 57, 41 A.3d 551 (Me. 2012).
Minn.—In re Candidacy of Independence Party Candidates Moore v. Kiffmeyer, 688 N.W.2d 854 (Minn. 2004).
Ballot access history
Ballot access history is an important factor in determining whether restrictions impermissibly burden the freedom of political association.
U.S.—Stone v. Board of Election Com'rs for City of Chicago, 750 F.3d 678 (7th Cir. 2014).

2 Ohio—State ex rel. Watson v. Hamilton Cty. Bd. of Elections, 88 Ohio St. 3d 239, 2000-Ohio-318, 725 N.E.2d 255 (2000).

3 U.S.—Munro v. Socialist Workers Party, 479 U.S. 189, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986).
Me.—Nader v. Maine Democratic Party, 2012 ME 57, 41 A.3d 551 (Me. 2012).

4 U.S.—Williams v. Sclafani, 444 F. Supp. 906 (S.D. N.Y. 1978), aff'd, 580 F.2d 1046 (2d Cir. 1978).

5 U.S.—Lindsay v. Bowen, 750 F.3d 1061 (9th Cir. 2014).
Legitimate interest
A state has a legitimate interest, for purposes of a minority political party's free association rights, in regulating the number of candidates on the ballot in order to prevent the clogging of its election machinery, avoid voter confusion, and assure that the winner is the choice of a majority, or at least a strong plurality, of those voting, without the expense and burden of runoff elections.
U.S.—Libertarian Party of North Dakota v. Jaeger, 659 F.3d 687 (8th Cir. 2011).

6 N.C.—Libertarian Party of North Carolina v. State, 365 N.C. 41, 707 S.E.2d 199 (2011).

7 W. Va.—Garcelon v. Rutledge, 173 W. Va. 572, 318 S.E.2d 622 (1984).

8 Mass.—Libertarian Ass'n of Massachusetts v. Secretary of Com., 462 Mass. 538, 969 N.E.2d 1095 (2012).

9 Ky.—Cook v. Popplewell, 394 S.W.3d 323 (Ky. 2011).

10 Ky.—Cook v. Popplewell, 394 S.W.3d 323 (Ky. 2011).

11 Ill.—Hoskins v. Walker, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

12 U.S.—Stone v. Board of Election Com'rs for City of Chicago, 750 F.3d 678 (7th Cir. 2014).

13 U.S.—Munro v. Socialist Workers Party, 479 U.S. 189, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986).

14 U.S.—McCarthy v. Kirkpatrick, 420 F. Supp. 366 (W.D. Mo. 1976).

15 W. Va.—State ex rel. Boley v. Tennant, 228 W. Va. 812, 724 S.E.2d 783 (2012).

16 U.S.—Duke v. Cleland, 954 F.2d 1526 (11th Cir. 1992).

17 U.S.—McCarthy v. Kirkpatrick, 420 F. Supp. 366 (W.D. Mo. 1976).

18 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979).

19 U.S.—Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 99 S. Ct. 983, 59 L. Ed. 2d 230 (1979); Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974).

Burden of proof on state

Alaska—Vogler v. Miller, 651 P.2d 1 (Alaska 1982).

20 U.S.—Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975); North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections, 538 F. Supp. 864 (E.D. N.C. 1982).

Minn.—Minnesota Fifth Congressional Dist. Independent-Republican Party v. State ex rel. Spannaus, 295 N.W.2d 650 (Minn. 1980).

21 U.S.—Lindsay v. Bowen, 750 F.3d 1061 (9th Cir. 2014).

S.C.—South Carolina Green Party v. South Carolina State Election Com'n, 612 F.3d 752 (4th Cir. 2010).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

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2. Political Matters

§ 1158. Elections and voters; freedom of association

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1461, 1462, 1466

Unduly restrictive state election laws may so impinge upon the freedom of association as to run afoul of the Constitution, and the power of a state in determining the conduct of elections must be exercised in a manner consistent with the constitutional right to associate for political purposes.

First Amendment associational rights and voting rights are closely connected since the right to form a party for the advancement of political goals means little if a party can be kept off the election ballot.[1] In general, unduly restrictive state election laws may so impinge upon the freedom of association as to run afoul of the Constitution,[2] and states, in exercising their powers of supervision over elections, and setting qualifications for voters,[3] may not infringe upon constitutional rights to associate for political purposes[4] or to associate with others for the common advancement of political beliefs and ideas.[5] In exercising the broad power that it possesses over election process for state offices, a state has the responsibility to observe the limits established by the First Amendment rights of the state's citizens, including the freedom of political association.[6]

So, although a state may regulate elections to insure fairness and to prevent confusion,[7] and to maintain fair, honest, and orderly elections,[8] election regulations that impose a severe burden on associational rights are subject to strict scrutiny and will be upheld only if they are narrowly tailored to serve compelling state interest.[9] On the other hand, if regulation imposes only modest burdens, then the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions on election procedures.[10] So, where a burden on First Amendment voting and associational rights occasioned by an election law is not severe, the State need not proffer a narrowly tailored regulation that advances a compelling state interest.[11] Courts first consider, in a realistic light, the extent and nature of the burden placed upon voters when determining what level of scrutiny to apply to a constitutional challenge that implicates voting and associational rights.[12]

When deciding whether a state election law violates associational rights, the court should weigh the character and magnitude of the burden the state's rule imposes on those rights against the interests the State contends justify that burden and should consider the extent to which the State's concerns make the burden necessary.[13]

Nominations; primary elections.

The freedom of association guaranteed by First Amendment prohibits a statutory ballot that allows voters who are not party members to vote in a primary election for candidates of a party that does not consent to the nonmembers voting.[14] Thus, a "blanket primary," in which voters may vote for any candidate regardless of voter's or candidate's party affiliation, violates political parties' right of association.[15] A partially closed ballot primary election, under which "statutory ballot" omits all candidates of a party which does not consent to voting by nonmembers, does not violate guarantee of associational freedom.[16]

A state's power to prescribe a political party's use of primaries or conventions to select nominees who appear on a general-election ballot is not absolute but is limited by the party's First Amendment associational right to limit its membership as it wishes, e.g., a state may not prescribe a procedure that permits nonparty members to determine a candidate bearing the party's standard in a general election.[17] A state's semiclosed primary system, under which a political party could invite only its own registered members and voters registered as Independents to vote in its primary, did not severely burden the associational rights of the state's citizenry so as to require application of strict scrutiny when the system was challenged as unconstitutionally burdening First Amendment right to freedom of political association.[18]

Speculation on the possibility that voters might misinterpret candidates' designation, on whatever ballot form was ultimately developed to implement a state's newly established blanket primary system, of their party of preference as a statement that the candidate had been endorsed by the political party that he or she indicated was not a legitimate basis for striking down a state law establishing a blanket primary system as facially violative of the political parties' associational rights, especially where the law was a result, not of a legislative enactment, but of a voter initiative. The law, on its face, did not severely burden the political parties' associational rights, and the State's asserted interest in providing voters with relevant information about candidates on the ballot was easily sufficient to sustain the law.[19] A provision of an open primary law stating that candidates of nonqualified political parties must identify themselves on the ballot as having "No Party Preference" or leave the space for a party preference designation blank does not improperly infringe on such candidates' constitutional right to freedom of association, absent evidence that "Independent" would have a more positive connotation than "No Party Preference."[20]

A feature of a state's statutory scheme for political parties' nominating candidates for trial court judges, consisting of primary elections in each judicial district to choose delegates to the parties' nominating conventions, imposed reasonable minimum requirements for delegate candidates, namely a 500-signature petition collected during 37 days preceding the primary and thus could not violate independent judicial candidates' individual First Amendment associational rights.[21]

CUMULATIVE SUPPLEMENT

Cases:

In determining whether the First Amendment rights of a political party to free association have been violated, courts consider whether any forced association of a political party with non-members creates a risk that nonparty members will skew either primary results or candidates' positions. U.S. Const. Amend. 1. Arizona Libertarian Party v. Hobbs, 925 F.3d 1085 (9th Cir. 2019).

Alleged burden on California State Assembly candidate's First and Fourteenth Amendment rights imposed by provisions of California Elections Code, which required primary ballots to list party preference of candidates who expressed preference for a political party other than one of six "qualified" parties as "None," was serious enough to require assessment of whether alternative methods would advance proffered governmental interests; "None" party-preference label was potentially misleading because it suggested that candidate had no political preferences, affiliations, or beliefs, or that he had no preference as among the six qualified parties, and burden of the misleading party-preference label fell entirely on candidates who preferred a non-qualified party. U.S. Const. Amends. 1, 14; Cal. Elec. Code §§ 8002.5, 13105. Soltysik v. Padilla, 910 F.3d 438 (9th Cir. 2018).

Important regulatory interests of managing elections in controlled manner, increasing voter participation, and increasing access to ballot were enough to justify only minimal burden that state statute imposed on political party's First Amendment associational rights by requiring parties to allow candidates to qualify for primary ballot through either nominating convention or by gathering signatures, or both. U.S. Const. Amend. 1; Utah Code Ann. § 20A-9-101(12)(c). Utah Republican Party v. Cox, 892 F.3d 1066 (10th Cir. 2018).

Provision of Pennsylvania election law imposing prohibition against qualified electors signing more than one nomination petition did not violate First Amendment, either on its face or as applied to voter; voter did not recall signing any nomination petition for a presidential candidate in the past, and any hope by voter to do so in future did not give rise to burden that outweighed Commonwealth's interest in avoiding ballot clutter and ensuring viable candidates. U.S. Const. Amend. 1; 25 Pa. Stat. Ann. § 2868. Benezet Consulting, LLC v. Boockvar, 433 F. Supp. 3d 670 (M.D. Pa. 2020).

Utah statute requiring candidate to obtain 28,000 signatures of registered voters in state who were permitted by qualified political party (QPP) to vote for QPP's candidates in primary election did not violate QPP's First Amendment right to free association, where unaffiliated voters were not allowed to sign petitions for QPP candidates. U.S.C.A. Const.Amend. 1; West's U.C.A. § 20A–9–408. Utah Republican Party v. Herbert, 144 F. Supp. 3d 1263 (D. Utah 2015).

Prospective candidate's and voter's associational rights under First and Fourteenth Amendments, including right to appear as candidate on presidential primary ballot and right to vote for prospective candidate, were not impermissibly burdened by statute allowing political parties to decide whether candidate's name would be on ballot, where burden on prospective candidate's and voter's rights was de minimis, as prospective candidate did not have constitutional right to be on primary ballot, write-in option was available to voter on primary ballot, and statute did not bar prospective candidate's right to be candidate on general election ballot as a party's nominee or write-in candidate, while political parties had legitimate associational interests and State had limited regulatory interest. U.S. Const. Amends. 1, 14; Minn. Stat. Ann. § 207A.13. De La Fuente v. Simon, 940 N.W.2d 477 (Minn. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Green Party of Tennessee v. Hargett, 767 F.3d 533 (6th Cir. 2014).
Fundamental rights
Rights of qualified voters to cast votes effectively, and the rights of individuals to associate for political purposes are of the most fundamental significance under the federal constitutional structure.
Vt.—Trudell v. State, 193 Vt. 515, 2013 VT 18, 71 A.3d 1235 (2013).

2 U.S.—Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973); Riddell v. National Democratic Party, 508 F.2d 770 (5th Cir. 1975).

3 U.S.—Communist Party of Indiana v. Whitcomb, 414 U.S. 441, 94 S. Ct. 656, 38 L. Ed. 2d 635 (1974).
Ill.—Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).

4 Ill.—Anderson v. Schneider, 67 Ill. 2d 165, 8 Ill. Dec. 514, 365 N.E.2d 900 (1977).

5 U.S.—Communist Party of Indiana v. Whitcomb, 414 U.S. 441, 94 S. Ct. 656, 38 L. Ed. 2d 635 (1974).

6 U.S.—Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

7 U.S.—MacBride v. Askew, 541 F.2d 465 (5th Cir. 1976).

8 Minn.—In re Candidacy of Independence Party Candidates Moore v. Kiffmeyer, 688 N.W.2d 854 (Minn. 2004).
Balance between interests of state and voters
Vt.—Anderson v. State, 194 Vt. 437, 2013 VT 73, 82 A.3d 577 (2013).

9 U.S.—Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

10 U.S.—Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008); Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

11 Vt.—Trudell v. State, 193 Vt. 515, 2013 VT 18, 71 A.3d 1235 (2013).

12 Md.—Burruss v. Board of County Commissioners of Frederick County, 427 Md. 231, 46 A.3d 1182 (2012).
Meaningful review required
Vt.—Anderson v. State, 194 Vt. 437, 2013 VT 73, 82 A.3d 577 (2013).

13 U.S.—Timmons v. Twin Cities Area New Party, 520 U.S. 351, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).
Alaska—O'Callaghan v. State, 914 P.2d 1250 (Alaska 1996).

14 Alaska—O'Callaghan v. State, Director of Elections, 6 P.3d 728 (Alaska 2000).

15 U.S.—California Democratic Party v. Jones, 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000).
Alaska—O'Callaghan v. State, Director of Elections, 6 P.3d 728 (Alaska 2000).

16 Alaska—O'Callaghan v. State, Director of Elections, 6 P.3d 728 (Alaska 2000).

17 U.S.—New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008).

18 U.S.—Clingman v. Beaver, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005).

19 U.S.—Washington State Grange v. Washington State Republican Party, 552 U.S. 442, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

20 Cal.—Field v. Bowen, 199 Cal. App. 4th 346, 131 Cal. Rptr. 3d 721 (1st Dist. 2011).

21 U.S.—New York State Bd. of Elections v. Lopez Torres, 552 U.S. 196, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008).

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16B C.J.S. Constitutional Law § 1159

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

2. Political Matters

§ 1159. Contributions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1463, 1469

In general, the right to make political contributions is protected under the constitutional right of freedom of association.

In general, the right to make political contributions is protected under the constitutional right of freedom of association.[1] Nevertheless, the government may restrict political contributions if it demonstrates a sufficiently important interest[2] and employs means closely drawn to address or match that interest.[3]

Although limitations[4] or restrictions on campaign contributions impinge on protected associational freedoms,[5] such limitations upon the amount that any one person or group may contribute to a candidate or political committee have been held to entail only a marginal restriction on the contributor's ability to engage in free association,[6] and the primary purpose of a particular statute, that is, to limit the actuality and appearance of corruption resulting from large individual campaign contributions, is a sufficient justification for the intrusion on the freedom of political association which results from the statute.[7] The test for campaign contribution limits does not impose any constitutional minimum below which legislatures cannot regulate, but rather, it asks whether the limits are so low as to impede the ability of candidates to amass the resources necessary for effective advocacy.[8]

Limitations on political contributions receive a lessened, but nonetheless rigorous, level of scrutiny under the First Amendment, and regulations limiting contributions may only be upheld if the State demonstrates a sufficiently important interest and employs a means closely drawn to avoid unnecessary abridgement of associational freedoms.[9] However, to survive a First Amendment facial challenge, a campaign finance law imposing a contribution limit involving significant interference with associational rights must be closely drawn to serve a sufficiently important interest.[10]

Under some authority, it has been held that legislation limiting the amount of campaign contributions a candidate for state or local office may accept would be a forbidden encroachment on the constitutional right of freedom of association.[11]

Although spending for political ends and contributing to political candidates both fall within First Amendment's protection of association, limits on political expenditures deserve closer scrutiny than restrictions on political contributions.[12]

Disclosure requirements.

The Bipartisan Campaign Reform Act of 2002[13] provision, requiring public disclosure of identities of certain persons funding "electioneering communications," including identification of certain individual contributors and disclosure of executory contracts for communications that had not yet aired, is not facially violative of such funder's free speech/free association rights.[14] Statutes requiring the disclosure of the names and addresses of campaign contributors,[15] or requiring disclosure of such information where the contribution is in excess of a specified amount,[16] have been held not to be violative of the constitutional right of freedom of association of contributors or would-be contributors. However, because compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity, the First Amendment requires that a compelling state interest be shown.[17]

CUMULATIVE SUPPLEMENT

Cases:

Provision of city campaign-finance law imposing base campaign contribution limit on candidates for mayor or city council was not a content-based restriction on speech, as would subject provision to strict scrutiny in First Amendment challenge brought by former city councilmember, contrary to councilmember's argument that since limit applied by its terms only to "campaign contributions," but not "officeholder contributions," while other provisions of city charter referred more broadly to "political contributions," which under Texas law comprised both "campaign" and "officeholder" contributions, limit constituted content-based restriction; provision drew no distinctions between contributions to a candidate or incumbent officeholder running for reelection. U.S. Const. Amend. 1. Zimmerman v. City of Austin, Texas, 881 F.3d 378 (5th Cir. 2018).

Campaign ethics statute prohibiting legislators and candidates from accepting campaign contributions from lobbyists or political action committees (PACs) during regular session of General Assembly was closely drawn to state's interest of preventing quid pro quo corruption or its appearance, as required to justify regulation of campaign contributions that interfered with associational freedoms protected by the First Amendment, under closely drawn test, where time-specific ban restricted less than would absolute ban and targeted time when risk of quid pro quo corruption and its appearance was highest, and it limited its coverage to two of the most ubiquitous and powerful players in political arena. U.S. Const. Amend. 1; KRS 6.767(3). Schickel v. Dilger, 925 F.3d 858 (6th Cir. 2019).

Under the intermediate scrutiny standard of review, campaign contribution limits are generally permissible if the government can establish that they are closely drawn to serve a sufficiently important interest. Proft v. Raoul, 944 F.3d 686 (7th Cir. 2019).

In valid electioneering disclosure laws that survive exacting scrutiny under the First Amendment, an organization may be required to designate officers, disclose its bank account information, and designate a treasurer responsible for recording contributions and expenditures and maintaining records for five years, as well as to file a short registration form containing the organization's name, relationship with other organizations, and persons with authority over the organization's finances. U.S. Const. Amend. 1. National Association for Gun Rights, Inc. v. Mangan, 933 F.3d 1102 (9th Cir. 2019).

Montana's statutory campaign contribution limits, which limited the amount of money individuals, political action committees and political parties could contribute to candidates for state elective office, were narrowly focused on Montana's interest in combating quid pro quo corruption or its appearance, and thus were not unduly restrictive under the First Amendment, where the contribution limits were targeted at high-end contributions that were most likely to result in actual or perceived corruption, the contribution limits did not restrict other forms of political affiliation, and Montana's contribution limits were consistent with other states' limits. U.S. Const. Amend. 1; Mont. Code Ann. § 13-37-216. Lair v. Motl, 873 F.3d 1170 (9th Cir. 2017).

The straw donor provision of the Federal Election Campaign Act (FECA), which prohibits persons from making campaign contributions in any other person's name, is designed to ensure accurate disclosure of contributor information. 52 U.S.C.A. § 30122. Campaign Legal Center and Democracy 21 v. Federal Election Commission, 952 F.3d 352 (D.C. Cir. 2020).

Federal Election Campaign Act (FECA) provision setting per-election, rather per-election-cycle, ceiling on individual contributions to candidates running for federal office did not violate donors' First Amendment rights of freedom to associate, even if per-election structure of FECA's base limit did not separately advance limit's anti-corruption objective, individuals who contributed to primary and general elections could contribute twice as much in one election cycle as individuals who contributed only to general elections, and Federal Election Commission regulations permitted commingling of primary-election and general-election contributions in certain circumstances; there was no indication that per-cycle approach had some inherent structural advantage in avoiding appearance and actuality of corruption from large campaign donations or that $2,600 per-election contribution limit was too low to permit effective campaign, Congress could have conceivably regarded one-time contribution of $5,200 in general or primary election alone to present greater risk of apparent or actual corruption than two distinct contributions of $2,600 in each of primary and general elections, per-election cap permitted additional contributions for runoff elections, and per-election ceiling guarded against unduly advantaging candidates who faced little meaningful opposition in party primary and promoted ability of candidates to gain adequate funding for each election in which they competed. U.S. Const. Amend. 1; 52 U.S.C.A. § 30116(a)(1); 11 C.F.R. §§ 110.1(b)(5)(ii)(B), 110.3(c)(3). Holmes v. Federal Election Commission, 875 F.3d 1153 (D.C. Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980), judgment aff'd, 454 U.S. 1130, 102 S. Ct. 985, 71 L. Ed. 2d 284 (1982).
Cal.—Woodland Hills Residents Assn., Inc. v. City Council, 26 Cal. 3d 938, 164 Cal. Rptr. 255, 609 P.2d 1029 (1980).
Associational rights affected
When an individual contributes money to a candidate, the person exercises both of the rights of political expression and political association: the contribution serves as a general expression of support for the candidate and his or her views and serves to affiliate a person with a candidate.
U.S.—McCutcheon v. Federal Election Com'n, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014).

2 U.S.—Federal Election Com'n v. Beaumont, 539 U.S. 146, 123 S. Ct. 2200, 156 L. Ed. 2d 179, 190 A.L.R. Fed. 687 (2003); Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000); Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

3 U.S.—McConnell v. Federal Election Com'n, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) (overruled on other grounds by, Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)); Federal Election Com'n v. Beaumont, 539 U.S. 146, 123 S. Ct. 2200, 156 L. Ed. 2d 179, 190 A.L.R. Fed. 687 (2003); Federal Election Com'n v. Colorado Republican Federal Campaign Committee, 533 U.S. 431, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001); Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000).

Not closely tailored

A law limiting campaign contributions is not closely tailored if it impermissibly interferes with protected associational rights even though there is no showing of its effect on campaign treasuries.

Colo.—Dallman v. Ritter, 225 P.3d 610 (Colo. 2010).

4 U.S.—Lodge No. 5 of Fraternal Order of Police ex rel. McNesby v. City of Philadelphia, 763 F.3d 358 (3d Cir. 2014).

5 La.—Casino Ass'n of Louisiana v. State ex rel. Foster, 820 So. 2d 494 (La. 2002).

6 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

Individual contribution limits

Individual contribution limits on donations to political campaigns and the prohibition on conduit contributions did not violate a defendant's free speech and association rights under the First Amendment.

U.S.—U.S. v. Whittemore, 776 F.3d 1074 (9th Cir. 2015).

7 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

La.—Casino Ass'n of Louisiana v. State ex rel. Foster, 820 So. 2d 494 (La. 2002).

8 U.S.—Nixon v. Shrink Missouri Government PAC, 528 U.S. 377, 120 S. Ct. 897, 145 L. Ed. 2d 886 (2000).

9 U.S.—Catholic Leadership Coalition of Texas v. Reisman, 764 F.3d 409 (5th Cir. 2014).

10 U.S.—Davis v. Federal Election Com'n, 554 U.S. 724, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008).

11 N.H.—Opinion of the Justices, 121 N.H. 434, 430 A.2d 191 (1981).

12 U.S.—Federal Election Com'n v. Colorado Republican Federal Campaign Committee, 533 U.S. 431, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001).

13 2 U.S.C.A. § 431.

14 U.S.—McConnell v. Federal Election Com'n, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) (overruled on other grounds by, Citizens United v. Federal Election Com'n, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010)).

15 U.S.—Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974).

16 U.S.—U.S. v. Finance Committee to Re-Elect the President, 507 F.2d 1194 (D.C. Cir. 1974).

17 Tex.—In re Bay Area Citizens Against Lawsuit Abuse, 982 S.W.2d 371 (Tex. 1998).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

3. Criminal Matters

§ 1160. Admission of evidence of defendant's associations in a criminal trial

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1452, 1453

Relevant evidence concerning a criminal defendant's associations may be admissible in criminal prosecutions without violating the defendant's right of association.

The First Amendment does not erect a per se barrier to admission of evidence concerning a defendant's associations at sentencing, simply because those associations are protected by the First Amendment.[1] The associations, however, must be shown to be "relevant" to issues involved in case[2] or to witness credibility.[3] Furthermore, the introduction of evidence, during the first phase of a trial, of a defendant's membership in a particular group did not violate the defendant's rights where the evidence was relevant to character issues, and to establish a plan for a crime, the evidence was not introduced during the penalty phase where it would have been irrelevant to aggravation or mitigation.[4]

Gang association has been held to be admissible,[5] relevant to prove an aggravating circumstance[6] or to permit the jury to consider punishing the defendant more severely for the defendant's threat to society.[7]

On the other hand, receipt into evidence at sentencing phase of prosecution of a stipulation regarding the defendant's membership in a prison gang, was constitutional error where the membership was not relevant to any of the issues being decided in the proceeding.[8] The First and Fourteenth Amendments bar admission of evidence of gang membership alone where it is irrelevant to any aggravating circumstance.[9]

Membership in an organization with illegal aims is not right of free association protected by the First Amendment and is admissible in punishment phase of trial.[10]

CUMULATIVE SUPPLEMENT

Cases:

During the mercy phase of a bifurcated first degree murder proceeding, admissible evidence necessarily encompasses evidence of the defendant's character, including evidence concerning the defendant's past, present and future, as well as evidence surrounding the nature of the crime committed by the defendant. State v. Trail, 778 S.E.2d 616 (W. Va. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Wisconsin v. Mitchell, 508 U.S. 476, 113 S. Ct. 2194, 124 L. Ed. 2d 436 (1993); Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992).
Ohio—State v. Robb, 88 Ohio St. 3d 59, 2000-Ohio-275, 723 N.E.2d 1019 (2000).
Tex.—Mason v. State, 905 S.W.2d 570 (Tex. Crim. App. 1995).

2 N.J.—State v. Nelson, 155 N.J. 487, 715 A.2d 281 (1998).
Tex.—Mason v. State, 905 S.W.2d 570 (Tex. Crim. App. 1995).

3 N.J.—State v. Nelson, 155 N.J. 487, 715 A.2d 281 (1998).

4 Okla.—Wood v. State, 1998 OK CR 19, 959 P.2d 1 (Okla. Crim. App. 1998).

5 Kan.—State v. Roberts, 261 Kan. 320, 931 P.2d 683 (1997).

6 Ill.—People v. Simms, 168 Ill. 2d 176, 213 Ill. Dec. 576, 659 N.E.2d 922 (1995).
Okla.—Torres v. State, 1998 OK CR 40, 962 P.2d 3 (Okla. Crim. App. 1998).

7 Ga.—Wilson v. State, 271 Ga. 811, 525 S.E.2d 339 (1999) (overruled on other grounds by, O'Kelley v. State, 284 Ga. 758, 670 S.E.2d 388 (2008)).

8 U.S.—Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992).

9 Ill.—People v. Jackson, 182 Ill. 2d 30, 230 Ill. Dec. 901, 695 N.E.2d 391 (1998), as modified, (June 3, 1998).

10 Tex.—Fuller v. State, 829 S.W.2d 191 (Tex. Crim. App. 1992).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

3. Criminal Matters

§ 1161. Prisoners; probation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1452, 1453

The fact of confinement and the needs of a penal institution impose limitations on associational rights.

In general, the fact of confinement and the needs of a penal institution impose limitations on associational rights that the Constitution protects outside of prison walls.[1] Freedom of association is among those rights least compatible with incarceration, and some curtailment of that freedom must be expected in prison context,[2] and whatever right an individual has to associate physically in free society may be curtailed upon conviction for violation of criminal laws.[3] Essentially, restriction of the right of association is part of the nature of the criminal process.[4]

Furthermore, an inmate's status as a prisoner and the operational realities of a prison dictate restrictions on the associational rights among inmates,[5] and prison officials may reasonably restrict the constitutional right of freedom of association among inmates.[6] So, constitutional associational rights may be curtailed in prison whenever the institution's officials, in the exercise of their informed discretion, reasonably conclude that such associations possess a likelihood of disruption to prison order or stability or otherwise interfere with the legitimate penological objectives of the prison environment.[7] Prison regulations affecting

the right to free association need not meet a "least restrictive means" test, rather, prison regulations generally only need to be rationally related to legitimate penological interests.[8]

The courts have determined that various prison regulations or actions of prison officials do not violate a prisoner's constitutional right of freedom of association,[9] including such regulations or actions refusing to allow a prisoner to join with others in the operation of a business while incarcerated,[10] or to form an association or union[11] of inmates, or to otherwise engage in particular union activities.[12]

Visitation rights.

Visitation rights concerning prisoners are protected in some degree by the Constitution,[13] and a total ban or unreasonable restrictions on prison visitation privileges implicates the constitutional associational right of the inmates.[14] Nevertheless, prison visitation regulations which are rationally related to legitimate penological objectives, including those of deterring use of alcohol and drugs in prison, maintaining internal security, and protecting child visitors, do not violate free association guarantee.[15]

Probation and parole restrictions.

Probation restrictions may affect fundamental rights such as freedom of association if the conditions are primarily designed to meet the ends of rehabilitation and protect the public[16] or prohibit further illegal conduct.[17] Similarly, a convicted defendant's freedom of association may be restricted during community placement if reasonably necessary to accomplish the essential needs of the state and public order.[18] In the supervised release context, a restriction on a defendant's right to free association must involve no greater deprivation of liberty than is reasonably necessary to achieve the goals of deterrence, protection of the public, and/or defendant rehabilitation.[19]

The fundamental rights of an inmate and spouse to associate and marry may be restricted by parole conditions that are reasonably related to legitimate penological interests.[20]

CUMULATIVE SUPPLEMENT

Cases:

District court did not abuse its discretion in imposing conditions of supervised release prohibiting defendant convicted of transporting child pornography and possessing child pornography from interacting with children or from going places where he knew children would be without probation approval, even though he had only committed non-contact offenses, there was no evidence that he had physically harmed his son or any child, and psychologist opined that he posed low risk of recidivism with proper treatment, where defendant had not undergone such treatment, he had sexually abused his sister when they were children, he viewed pornography depicting children of many ages, and his file collection reflected interest in very young children and in violence directed at children. 18 U.S.C.A. § 3583(d). United States v. Benoit, 975 F.3d 20 (1st Cir. 2020).

Special conditions of supervised release, that defendant notify his employer of his computer-related offense if his job required computer access with internet capability and that defendant not associate with any children under the age of 18 unless a responsible adult was present and defendant had prior approval from probation officer, were imposed on defendant convicted of possession of child pornography without finding that he would continue to engage in conduct similar to that for which he was convicted and with no evidence that defendant posed a risk of harm to minors, thus warranting remand for reconsideration. U.S.S.G. § 5F1.5(a). United States v. Lombardi, 727 Fed. Appx. 18 (2d Cir. 2018).

Special condition of supervised release of defendant convicted of possession with intent to distribute marijuana within 1000 feet of a school prohibiting him from knowingly associating with any member, prospect, or associate member of any gang without prior approval of probation officer, and stating that District Court would presume association for purpose of participating in gang activities if he was found in company of such individuals while wearing clothing, colors, or insignia of gang was unconstitutionally vague for three independent reasons: "gang" was undefined, "associate member" was undefined, and "association" could not include incidental contacts. Comprehensive Drug Abuse Prevention and Control Act of 1970 §§ 401, 419, 21 U.S.C.A. §§ 841(b)(1)(D), 860(a). United States v. Washington, 893 F.3d 1076 (8th Cir. 2018).

Where a condition of supervised release interferes with the fundamental right of familial association, compelling circumstances must be present to justify the condition. United States v. Cabral, 926 F.3d 687 (10th Cir. 2019).

Special condition of supervised release, which banned defendant from associating with gang members, including defendant's foster brothers, was substantively reasonable; defendant's history and characteristics reflected extensive involvement with gang, record showed gang involvement in defendant's criminal history and underlying offense, and ban was reasonably related to protection of public, as ban could curtail defendant's source and need for guns. 18 U.S.C.A. § 3583(d). United States v. Pacheco-Donelson, 893 F.3d 757 (10th Cir. 2018).

Condition of supervised release, which prohibited defendant from associating with any person convicted of felony, did not violate defendant's rights of association; there was no evidence that any of defendant's family members had felony convictions, and keeping defendant away from other convicted felons was sensible way to reduce risk of recidivism. U.S.C.A. Const.Amend. 1. U.S. v. Muñoz, 812 F.3d 809 (10th Cir. 2016).

Supervised release condition that defendant, who was convicted of receipt of child pornography, not attend religious services with minors present was not justified by a compelling government interest and, thus, violated defendant's First Amendment right to religious observance; condition was not the least drastic means of ensuring the public's safety, minors were usually present at religious services, which effectively prevented defendant from attending church of his choice with his father, who helped ensure defendant did not interact with minors without supervision, and condition impeded rehabilitation because participating in religious services could assist past offenders to return to their community and avoid recidivism. U.S. Const. Amend. 1; 18 U.S.C.A. § 3583(d). United States v. Hernandez, 209 F. Supp. 3d 542 (E.D. N.Y. 2016).

Probation condition, forbidding defendant from associating with people who had drug convictions, did not unconstitutionally infringe on his right to freedom of association under First Amendment; defendant was convicted of burglary and theft, burglary and theft often were motivated by drug habit, forbidding defendant to associate with anyone who had drug conviction was rationally defensible, and probation condition was reasonably related to avoidance of future criminality. U.S. Const. Amend. 1; 730 Ill. Comp. Stat. Ann. 5/5-6-3(b). People v. Hammons, 434 Ill. Dec. 872, 138 N.E.3d 31 (App. Ct. 4th Dist. 2018), appeal denied, 427 Ill. Dec. 746, 119 N.E.3d 1028 (Ill. 2019).

The trial court erred when it imposed four conditions of probation that restricted defendant's contact with minors even though his offenses did not involve minors; sex-offender probation conditions that explicitly restricted defendant's contact with minors could not be said to be reasonably related to the treatment of defendant and the protection of public safety, when defendant's sex crime was not against a minor, and there was no evidence that defendant posed a particular threat to children. Waters v. State, 65 N.E.3d 613 (Ind. Ct. App. 2016).

General reasonableness standard, rather than heightened level of scrutiny, applied to probation condition that prohibited defendant convicted of sexual abuse of a minor from having any unsupervised contact with children, even though such condition infringed upon defendant's fundamental due process right to parent his own son, who was not victim of defendant's abuse, and victim was not blood relative of defendant or same gender as defendant's child. U.S.C.A. Const.Amend. 14; West's Ann.Md.Code, Criminal Procedure, § 6–221. Allen v. State, 449 Md. 98, 141 A.3d 194 (2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977).

2 U.S.—Overton v. Bazzetta, 539 U.S. 126, 123 S. Ct. 2162, 156 L. Ed. 2d 162, 6 A.L.R.6th 731 (2003).

3 U.S.—White v. Keller, 438 F. Supp. 110 (D. Md. 1977), judgment aff'd, 588 F.2d 913 (4th Cir. 1978); Fennell v. Carlson, 466 F. Supp. 56 (W.D. Okla. 1978).

4 Wyo.—Jones v. State, 2002 WY 35, 41 P.3d 1247, 99 A.L.R.5th 761 (Wyo. 2002).

5 U.S.—Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977); Bukhari v. Hutto, 487 F. Supp. 1162 (E.D. Va. 1980).

6 **Particular requirement**

Requirement of state department of corrections regulation that organized groups seek official recognition through established procedure before engaging in activity is a reasonable limitation.

U.S.—Stringer v. DeRobertis, 541 F. Supp. 605 (N.D. Ill. 1982), judgment aff'd, 738 F.2d 442 (7th Cir. 1984).

7 U.S.—Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977).

8 U.S.—Castro v. Terhune, 712 F.3d 1304 (9th Cir. 2013).

9 U.S.—Arsberry v. Sielaff, 586 F.2d 37 (7th Cir. 1978).

10 U.S.—Garland v. Polley, 594 F.2d 1220 (8th Cir. 1979).

11 U.S.—Brooks v. Wainwright, 439 F. Supp. 1335 (M.D. Fla. 1977).

12 U.S.—Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 97 S. Ct. 2532, 53 L. Ed. 2d 629 (1977).

13 U.S.—Hamilton v. Saxbe, 428 F. Supp. 1101 (N.D. Ga. 1976), aff'd, 551 F.2d 1056 (5th Cir. 1977).

14 U.S.—Laaman v. Helgemoe, 437 F. Supp. 269 (D.N.H. 1977).

15 U.S.—Overton v. Bazzetta, 539 U.S. 126, 123 S. Ct. 2162, 156 L. Ed. 2d 162, 6 A.L.R.6th 731 (2003).

16 Del.—Jackson v. State, 821 A.2d 881 (Del. 2003).

Ga.—Land v. State, 262 Ga. 898, 426 S.E.2d 370 (1993) (rationally related to rehabilitative purpose).

N.D.—State v. Aune, 2002 ND 176, 653 N.W.2d 53 (N.D. 2002) (related to goals of probation and protected rights of law-abiding citizens).

Sexual molestation

Ind.—Rexroat v. State, 966 N.E.2d 165 (Ind. Ct. App. 2012).

17 U.S.—U.S. v. Turner, 44 F.3d 900 (10th Cir. 1995).

Prohibition on defendant from entering specified "high vice" area of city

Or.—State v. Donahue, 243 Or. App. 520, 259 P.3d 981 (2011).

18 Wash.—State v. Riles, 135 Wash. 2d 326, 957 P.2d 655 (1998) (abrogated on other grounds by, State v. Valencia, 169 Wash. 2d 782, 239 P.3d 1059 (2010)).

19 U.S.—Castro v. Terhune, 712 F.3d 1304 (9th Cir. 2013).

20 N.Y.—George v. New York State Dept. of Corrections and Community Supervision, 107 A.D.3d 1370, 968 N.Y.S.2d 670 (3d Dep't 2013), leave to appeal dismissed, 22 N.Y.3d 928, 976 N.Y.S.2d 442, 998 N.E.2d 1067 (2013).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

4. Denial of Public Employment; Public Employees' Right to Associate

§ 1162. Public employees' right of association; discipline for employee expression or association

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1446, 1472 to 1475

Public employees enjoy the constitutional guaranty of freedom of association, and an applicant's right to freedom of association may not be infringed by denying the applicant the privilege of public employment because of his or her exercise of such right.

In general, public employees enjoy the constitutional guaranty of freedom of association,[1] and the First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate or to not believe and not associate.[2] The government may not deny public employment because a person has exercised his or her right of association,[3] nor can public employment be conditioned on political belief in the absence of vital governmental interest.[4]

The First Amendment generally prohibits a public employer from disciplining, demoting, or firing an employee based on that employee's exercise of First Amendment rights, including speaking out on a matter of public concern, engaging in expressive conduct to the same effect, or associating with a particular political party,[5] and a public employee surely can associate and

speak freely and petition openly, and he or she is protected by the First Amendment from retaliation for doing so.[6] The test for determining whether a violation of First Amendment rights, including associational rights, has occurred in form of employer retaliation against a public employee is whether the employer's action would have occurred "but for" the protected conduct.[7]

Nonetheless, while public employees do not necessarily shed their First Amendment rights of speech and political association in exchange for their jobs, they often must make adjustment, that is to say, public employees' exercise of certain First Amendment rights may legitimately be restrained where it could lead to inability of elected officials to get their jobs done on behalf of the public.[8] So, while patronage dismissals of public employees based upon political beliefs or affiliations are generally prohibited as violative of the employees' First Amendment freedoms of political belief and association, in limited circumstances, these constitutional rights bow to the government's interest in maintaining efficiency and effectiveness, or the need for political loyalty, and party affiliation may be a legitimate requirement for government employment.[9]

In any event, before a public employee's right of association can be curtailed, government must show a compelling interest,[10] and any restriction on a public employee's right of association must be closely drawn in order to avoid unnecessary abridgment of the constitutional right of free association.[11]

In general, public employment may not be conditioned on an oath denying past, or abjuring future, associational activities within constitutional protection, and such protected activities include membership in organizations having illegal purposes unless one knows of the purpose and shares a specific intent to promote the illegal purpose.[12]

A governmental regulation or requirement restricts a public employee's fundamental right to associate freely[13] where such regulation fails to meet the constitutional requirement that the government protect its interest using the least drastic means available causing the least injury to the fundamental constitutional freedom of association.[14]

Footnotes

1 U.S.—Reussow v. Eddington, 483 F. Supp. 739 (D. Colo. 1980).
As to freedom of association rights of public employees in labor matters, generally, see § 1162.
As to freedom of association rights of public employees in political matters, generally, see § 1156.

2 U.S.—Garcia-Gonzalez v. Puig-Morales, 761 F.3d 81 (1st Cir. 2014); Wagner v. Jones, 664 F.3d 259, 275 Ed. Law Rep. 36 (8th Cir. 2011).

3 Wash.—Jordan v. City of Oakville, 106 Wash. 2d 122, 720 P.2d 824 (1986).

4 U.S.—Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990).

5 U.S.—Heffernan v. City of Paterson, 777 F.3d 147 (3d Cir. 2015).
Must reach matter of public concern
U.S.—Singer v. Ferro, 711 F.3d 334 (2d Cir. 2013).
Burden
With respect to First Amendment association claims, a public employee bears the initial burden of proving that his or her exercise of First Amendment rights was a substantial or motivating factor in the employer's decision to terminate him or her and if the employee satisfies that burden, the employer will avoid liability if it can demonstrate, by a preponderance of the evidence, that it would have made the same employment decision absent the protected expression.
U.S.—Bland v. Roberts, 730 F.3d 368 (4th Cir. 2013), as amended, (Sept. 23, 2013).

6 U.S.—State Emp. Bargaining Agent Coalition v. Rowland, 718 F.3d 126 (2d Cir. 2013), cert. dismissed, 134 S. Ct. 893, 187 L. Ed. 2d 699 (2014) and cert. denied, 134 S. Ct. 1002, 187 L. Ed. 2d 863 (2014).

7 Ohio—Fort Frye Teachers Ass'n, OEA/NEA v. State Employment Relations Bd., 81 Ohio St. 3d 392, 1998-Ohio-435, 692 N.E.2d 140, 124 Ed. Law Rep. 684 (1998).

8 Tenn.—Parker v. Shelby County Government Civil Service Merit Bd., 392 S.W.3d 603 (Tenn. Ct. App. 2012), appeal denied, (Jan. 9, 2013).

9 U.S.—Peterson v. Dean, 777 F.3d 334 (6th Cir. 2015).

Two-pronged test to determine whether public employee can be properly terminated on account of political-party affiliation

U.S.—O'Connell v. Marrero-Recio, 724 F.3d 117 (1st Cir. 2013).

Who is policymaker

A public employee is considered a policymaker whose political affiliation can be a valid job criterion without violating the employee's association rights under the First Amendment, if the position held by the employee authorizes, either directly or indirectly, meaningful input into governmental decision-making on issues where there is room for principled disagreement on goals or their implementation.

Ind.—Board of Com'rs of Delaware County v. Evans, 979 N.E.2d 1042 (Ind. Ct. App. 2012).

10 U.S.—Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990) (vital governmental interest); McMahon v. Board of Selectmen of Town of Newtown, 506 F. Supp. 537 (D. Conn. 1981).

11 U.S.—Wilson v. Taylor, 658 F.2d 1021 (5th Cir. 1981).

12 U.S.—Cole v. Richardson, 405 U.S. 676, 92 S. Ct. 1332, 31 L. Ed. 2d 593 (1972).

13 **Police officer**

Mich.—Sponick v. City of Detroit Police Dept., 49 Mich. App. 162, 211 N.W.2d 674 (1973).

14 N.Y.—Curle v. Ward, 59 A.D.2d 286, 399 N.Y.S.2d 308 (3d Dep't 1977), judgment modified on other grounds, 46 N.Y.2d 1049, 416 N.Y.S.2d 549, 389 N.E.2d 1070 (1979).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

XIII. Right of Association

B. Right of Association as Applied to Specific Activities, Persons, or Entities

4. Denial of Public Employment; Public Employees' Right to Associate

§ 1163. Teachers; public school employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1440, 1446 to 1448, 1472 to 1475

The general rule that public employees enjoy the constitutional guaranty of freedom of association extends to teachers.

The general rule that public employees generally enjoy the constitutional guaranty of freedom of association extends to teachers.[1] By engaging in teaching in public schools, a teacher does not give up the right to freedom of association[2] and public school officials may not interfere with a teacher's exercise of the right of free association.[3]

Ordinarily, a nontenured faculty member has no right to continued employment beyond the duration and terms of the contract, and a school is free not to rehire him or her for good reasons or for poor reasons or even for no reason whatever.[4] However, the decision not to rehire may not be predicated on the teacher's exercise of the constitutionally protected right of freedom of association.[5]

Nonetheless, a teacher's right of association does not limit the right of a governmental body to carry on in the public interest[6] and a school has a right not to rehire a teacher at a point where the exercise of the teacher's constitutional right of freedom of association overbalances and outweighs his or her usefulness as an instructor.[7]

Footnotes

1 U.S.—Orr v. Thorpe, 427 F.2d 1129 (5th Cir. 1970).
Fla.—Texton v. Hancock, 359 So. 2d 895 (Fla. 1st DCA 1978).
Ill.—Chicago High School Assistant Principals Ass'n v. Board of Ed. of City of Chicago, 5 Ill. App. 3d 672, 284 N.E.2d 14 (1st Dist. 1972).
As to freedom of association rights of teachers and public school employees in labor matters, see § 1163.

2 U.S.—Beilan v. Board of Public Ed., School Dist. of Philadelphia, 357 U.S. 399, 78 S. Ct. 1317, 2 L. Ed. 2d 1414 (1958).

3 Ill.—Chicago High School Assistant Principals Ass'n v. Board of Ed. of City of Chicago, 5 Ill. App. 3d 672, 284 N.E.2d 14 (1st Dist. 1972).

4 U.S.—Cooper v. Ross, 472 F. Supp. 802 (E.D. Ark. 1979).

5 U.S.—Cooper v. Ross, 472 F. Supp. 802 (E.D. Ark. 1979); Guerra v. Roma Independent School Dist., 444 F. Supp. 812 (S.D. Tex. 1977).

6 **School board**
Ill.—Chicago High School Assistant Principals Ass'n v. Board of Ed. of City of Chicago, 5 Ill. App. 3d 672, 284 N.E.2d 14 (1st Dist. 1972).

7 U.S.—Jennings v. Meridian Municipal Separate School Dist., 337 F. Supp. 567 (S.D. Miss. 1970), judgment aff'd, 453 F.2d 413 (5th Cir. 1971).

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